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Nos. 10-238, 10-239

In The
Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, et al.,
Petitioners,
v.
KEN BENNETT, et al.,
Respondents.

JOHN MCCOMISH, et al.,
Petitioners,
v.
KEN BENNETT, et al.,
Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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NICHOLAS C. DRANIAS*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
ndranias@goldwaterinstitute.org
Counsel for Petitioners John McComish, et al.

WILLIAM R. MAURER*
INSTITUTE FOR JUSTICE
101 Yesler Way, Suite 603
Seattle, WA 98104
Tel: (206) 341-9300
Fax: (206) 341-9311
wmaurer@ij.org
Counsel for Petitioners Arizona Free Enterprise Club's Freedom Club PAC, et al.

MARY R. O'GRADY*
Solicitor General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Solicitor.General@azag.gov
Counsel for Respondents Ken Bennett, et al.

BRADLEY S. PHILLIPS*
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Brad.Phillips@mto.com
Counsel for Respondent Clean Elections Institute, Inc.

*Counsel of Record

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[Additional Counsel Listed On Inside Front Cover]

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CLINT BOLICK
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR
CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
Additional Counsel for Petitioners
John McComish, et al.

WILLIAM H. MELLOR
STEVEN M. SIMPSON
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
wmellor@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY D. KELLER
PAUL V. AVELAR
INSTITUTE FOR JUSTICE
398 South Mill Avenue, Suite 301
Tempe, AZ 85281
Tel: (480) 557-8300
Fax: (480) 557-8305
tkeller@ij.org
pavelar@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY A. NELSON
Chief Deputy Attorney General
JAMES E. BARTON II
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Additional Counsel for Respondents
Ken Bennett, et al.

GRANT A. DAVIS-DENNY
ELISABETH J. NEUBAUER
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Additional Counsel for Respondent
Clean Elections Institute, Inc.

MONICA YOUN
MIMI MARZIANI
THE BRENNAN CENTER
FOR JUSTICE AT NYU
SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Tel: (212) 992-8158
Fax: (212) 995-4550
monica.youn@nyu.edu
Additional Counsel for Respondent
Clean Elections Institute, Inc.

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U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:08-cv-01550-ROS

McComish et al v. Brewer et al

Date Filed	#	Docket Text
08/21/2008	1	COMPLAINT. Filing fee received: $ 350.00, receipt number PHX074822, filed by Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie.(MHA) (Entered: 08/22/2008)
08/21/2008		This case has been assigned to the Honorable Roslyn O. Silver. All future pleadings or documents should bear the correct case number: CV-08-1550-PHX-ROS. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (MHA) (Entered: 08/22/2008)
08/26/2008	10	ORDER – IT IS ORDERED Plaintiffs' Motion for a Temporary Restraining Order shall be filed with the Court and Defendants notified by 5:00 p.m., August 26, 2008. IT IS FURTHER ORDERED Defendants shall file a response by 8:00 a.m., August 28, 2008. IT IS FURTHER ORDERED a hearing on Plaintiffs Temporary Restraining Ordershall be held at 3:00pm, August 28, 2008 before Judge Roslyn O. Silver.

Signed by Judge Roslyn O Silver on 8/26/08. (CLB) (Entered: 08/26/2008)

08/26/2008 13 First MOTION for Temporary Restraining Order by Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie. (Attachments: # 1 Appendix Table of Contents to Exhibits, # 2 Affidavit Declaration of Gibbons, # 3 Exhibit Gibbons Ex. A.1, # 4 Affidavit Bouie, # 5 Exhibit Bouie Ex. B.1, # 6 Exhibit Bouie Ex.B.2, # 7 Affidavit Sposito, # 8 Errata Sposito Ex. C.1, # 9 Exhibit Sposito Exhibit C.2, # 10 Exhibit Sposito Ex. C.3, # 11 Text of Proposed Order)(Bolick, Clint) (Entered: 08/26/2008)

08/26/2008 14 Additional Attachments to Main Document re 13 First MOTION for Temporary Restraining Order *Sposito Aff., Ex.C.1* by Plaintiffs Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie. (Bolick, Clint) (Entered: 08/26/2008)

08/26/2008 15 NOTICE of Hearing on Motion 13 First MOTION for Temporary Restraining Order :Motion Hearing set for 8/28/2008 at 03:00PM before Judge Roslyn O Silver filed by John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie, and Doug Sposito. (Bolick,

		Clint) Modified on 8/27/2008 (TLJ). DOCKET TEXT MODIFIED TO IDENTIFY FILERS. (Entered: 08/26/2008)
08/26/2008	16	Additional Attachments to Main Document re 13 First MOTION for Temporary Restraining Order *Declaration of Andrea Woodmansee* by Plaintiffs Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie. (Attachments: #1 Exhibit Woodmansee Ex. D.1, # 2 Exhibit Woodmansee Ex. D.2)(Bolick, Clint) (Entered: 08/26/2008)
08/26/2008	17	Additional Attachments to Main Document re 13 First MOTION for Temporary Restraining Order *Dranias Declaration* by Plaintiffs Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie. (Attachments: # 1 Exhibit Dranias Aff., Ex. E.1, # 2 Exhibit Dranias Aff., Ex. E.2, # 3 Exhibit Dranias Ex. E.3)(Bolick, Clint) (Entered: 08/26/2008)
08/27/2008	19	Notice re of Filing Motion to Transfer and Consolidate by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels (Attachments: # 1 Exhibit A)(O'Grady, Mary) (Entered: 08/27/2008)

08/28/2008	22	Notice re Notice of Filing of Objection and Alternative Response to Motion to Transfer and Consolidate in Martin v. Brewer, 04-cv-0200 by Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie (Dranias, Nicholas) (Entered: 08/28/2008)
08/28/2008	23	RESPONSE to Motion re 13 First MOTION for Temporary Restraining Order filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	24	DECLARATION of Declaration of Tanja Shipman re 23 Response to Motion *for Temporary Restraining Order* by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit)(O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	25	DECLARATION of Jackie Thrasher re 23 Response to Motion *for Temporary Restraining Order* by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	26	DECLARATION of Kara Kelty re 23 Response to Motion *for Temporary*

		Restraining Order by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	27	DECLARATION of John Valdez re 23 Response to Motion *for Temporary Restraining Order* by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit)(O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	28	DECLARATION of Todd Lang re 23 Response to Motion *for Temporary Restraining Order* by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit)(O'Grady, Mary) (Entered: 08/28/2008)
08/28/2008	29	Minute Entry. Proceedings held before Judge Roslyn O Silver: Temporary Restraining Hearing held on 8/28/2008. Matter is taken under advisement. Order to issue. (Court Reporter Liz Lemke.)(CLB) (Entered: 08/28/2008)
08/29/2008	30	ORDER denying 13 Motion for a Temporary Restraining Order. IT IS FURTHER ORDERED a hearing will be held on September 3, 2008, 1:30 p.m. to determine whether a

preliminary injunction should be granted or, should the parties decide that discovery is necessary, the preliminary injunction hearing will be continued and a status hearing will be held in its place. Signed by Judge Roslyn O Silver on 8/29/08.(CLB) (Entered: 08/29/2008)

09/01/2008 31 First MOTION to Intervene *as Plaintiffs* by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Text of Proposed Order granting motion to intervene as plaintiffs, # 2 Exhibit Exhibits A-D)(Keller, Timothy) (Entered: 09/01/2008)

09/01/2008 32 LODGED Proposed Proposed Complaint In Intervention re: 31 First MOTION to Intervene *as Plaintiffs*. Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Exhibit Exhibits A-C)(Keller, Timothy) (Entered: 09/01/2008)

09/01/2008 33 MOTION for Preliminary Injunction by Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC. (Attachments:

1 Text of Proposed Order granting preliminary injunction, #2 Exhibit Exhibits A-E)(Keller, Timothy) (Entered: 09/01/2008)

09/02/2008 34 ORDER denying 33 Motion for Preliminary Injunction. Signed by Judge Roslyn O Silver on 9/2/08. (DMT,) (Entered: 09/02/2008)

09/02/2008 36 RESPONSE to Motion re 31 First MOTION to Intervene *as Plaintiffs* filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (O'Grady, Mary) (Entered: 09/02/2008)

09/02/2008 37 MOTION for Preliminary Injunction by Robert Burns, Rick Murphy, Arizona Taxpayers Action Committee. (Attachments: # 1 Text of Proposed Order granting preliminary injunction, # 2 Exhibit Exhibits A-E)(Keller, Timothy) (Entered: 09/02/2008)

09/02/2008 42 REPLY in Support re 31 First MOTION to Intervene *as Plaintiffs* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Exhibit Attchment Declarations)(Keller, Timothy) (Entered: 09/02/2008)

09/02/2008 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs*

by Doug Sposito, John McComish, Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie. (Attachments: # 1 Appendix Index to Exhibits, # 2 Affidavit Dranias Supp. Declaration, # 3 Affidavit McComish Declaration, # 4 Affidavit McLain Declaration, # 5 Affidavit Gibbons Supplemental Declaration, # 6 Affidavit Bouie Supplemental Declaration, # 7 Affidavit Sposito Supplemental Declaration, #8 Text of Proposed Order Proposed Order for Preliminary Injunction)(Dranias, Nicholas) (Entered: 09/02/2008)

09/02/2008 44 NOTICE of Hearing on Motion 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* :Motion Hearing set for 9/3/2008 at 01:30 PM in Courtroom 604, 401 West Washington Street, Phoenix, AZ 85003 before Judge Roslyn O Silver. (Dranias, Nicholas) (Entered: 09/02/2008)

09/02/2008 45 MOTION to Intervene by Clean Elections Institute, Inc.. (Attachments: # 1 [Proposed] Order)(Neubauer, Elisabeth) (Entered: 09/02/2008)

09/02/2008 46 REQUEST re: Request for Judicial Notice *in Support of Motion to Intervene* by Intervenor Defendant Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 09/02/2008)

09/03/2008	48	Notice re of Defendants' Proposed Preliminary Injunction Briefing and Discovery Schedule by Jan Brewer, Clean Elections Institute, Inc., Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels (O'Grady, Mary) (Entered: 09/03/2008)
09/03/2008	49	DECLARATION of Declaration re 37 MOTION for Preliminary Injunction *Declaration of Dennis Shane Wikfors* by Intervenor Parties Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Keller, Timothy) (Entered: 09/03/2008)
09/03/2008	52	Minute Entry. Proceedings held before Judge Roslyn O Silver: This is the time set for a Preliminary Injunction Hearing. Hearing is vacated and Status Hearing is held. IT IS ORDERED granting the Motion to Intervene by Clean Elections Institute, Inc. [doc. 45]. Order to issue. IT IS FURTHER ORDERED taking under advisement the Motion to Intervene by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Clubs Freedom Club PAC, Arizona Taxpayers Action Committee [doc. 31]. (Court Reporter Elaine Cropper.)(CLB) (Entered: 09/03/2008)

09/03/2008 53 ORDER granting 45 Motion to Intervene. CEI shall bepermitted to intervene as a defendant in this action.. Signed by Judge Roslyn O Silver on 9/3/08.(DMT,) (Entered: 09/03/2008)

09/03/2008 54 ORDER granting 31 Motion to Intervene. All intervenors shall be allowed to intervene as Plaintiffs. Parties shall submit a case management plan and, if necessary, request a status hearing by 9:00 a.m., Friday, Sep. 5, 2008.. Signed by Judge Roslyn O Silver on 9/3/08.(DMT,) (Entered: 09/03/2008)

09/03/2008 58 COMPLAINT IN INTERVENTION filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee against defendants.(DMT,) (Entered: 09/05/2008)

09/03/2008 59 Additional Attachments to Main Document re 58 Complaint by Intervenor Plaintiffs being exhibits. (DMT,) (Entered: 09/05/2008)

09/04/2008 56 AMENDED COMPLAINT *by Original Plaintiffs* against Jan Brewer, Clean Elections Institute, Inc., Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, filed by Kirk Adams, Doug Sposito, John McComish,

Nancy McLain, Kevin Gibbons, Frank Antenori, Tony Bouie.(Dranias, Nicholas) (Entered: 09/04/2008)

09/09/2008 81 ORDER Preliminary Injunction Hearing set as to 37 MOTION for Preliminary Injunction, 43 First MOTION for Preliminary Injunction: Motion Hearing set for 10/9/2008 at 09:00AM before Judge Roslyn O Silver. The deadline for depositions shall be Friday, September 26, 2008. See PDF document for preliminary injunction briefing schedule. The parties shall submit a proposed hearing schedule by Monday, October 5, 2008. Signed by Judge Roslyn O Silver on 9/9/08. (LSP) (Entered: 09/09/2008)

09/09/2008 83 ORDER that a Preliminary Injunction Hearing is set for 10/9/2008 at 09:00 AM before Judge Roslyn O Silver. See attached pdf for full details and deadlines. Signed by Judge Roslyn O Silver on 09/09/08. (ESL,) (Entered: 09/09/2008)

09/10/2008 89 TRANSCRIPT of Proceedings re: Temporary Restraining Order Hearing held on 8/28/08 before Judge Roslyn O Silver. Court Reporter: Elizabeth A Lemke. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript

Restriction. After that date it may be obtained through PACER. Redaction Request due 10/1/2008. Redacted Transcript Deadline set for 10/14/2008. Release of Transcript Restriction set for 12/9/2008. (BAS,) (Entered: 09/10/2008)

09/23/2008 115 TRANSCRIPT of Proceedings re: Preliminary Injunction and Status Hearing held on 9/3/08 before Judge Roslyn O Silver. Court Reporter: Elaine Cropper. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/14/2008. Redacted Transcript Deadline set for 10/24/2008. Release of Transcript Restriction set for 12/22/2008. (BAS,) (Entered: 09/23/2008)

09/23/2008 120 RESPONSE in Opposition re 37 MOTION for Preliminary Injunction, 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* filed by Clean Elections Institute, Inc.. (Davis-Denny, Grant) (Entered: 09/23/2008)

09/23/2008 121 DECLARATION of Declaration of Meg Burton Cahill in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to

Plaintiffs' and Plaintiff-Intervenors' Motions for Preliminary Injuction re 120 Response in Opposition to Motion by Intervenor Defendant Clean Elections Institute, Inc. filed by Clean Elections Institute, Inc.. (Davis-Denny, Grant) (Entered: 09/23/2008)

09/23/2008 122 DECLARATION of Grant A. Davis-Denny in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motions for a Preliminary Injunction re 120 Response in Opposition to Motion by Intervenor Defendant Clean Elections Institute, Inc. filed by Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, #6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J)(Davis-Denny, Grant) (Entered: 09/23/2008)

09/23/2008 123 Additional Attachments to Main Document re 122 Declaration., *Exhibit K to Declaration of Grant A. Davis-Denny in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motions for Preliminary Injunction* by Intervenor Defendant Clean Elections Institute, Inc.. (Davis-Denny, Grant) (Entered: 09/23/2008)

09/23/2008 124 RESPONSE to Motion re 37 MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) (Entered: 09/23/2008)

09/23/2008 125 DECLARATION of Tanja K. Shipman in Support of re 124 Response (Opposition) to Motion for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6, # 7 Exhibit Exhibit 7, # 8 Exhibit Exhibit 8)(Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 126 DELARATION of Todd F. Lang in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1

Exhibit Exhibit 1, # 2 Exhibit Exhibit 2)(Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTE. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 127 DECLARATION of Daniel Patterson in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Gary Scaramazzo, Royann J Parker, Donald Lindholm. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 128 DECLARATION of Paula Forster in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT

DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 129 DECLARATION of Kathy Romano in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 130 DECLARATION OF MATT HEINZ in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 133 DECLARATION of Dr. Kenneth R. Mayer in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer,

Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3)(Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG,). (Entered: 09/23/2008)

09/23/2008 134 DECLARATION of Tammie Pursley in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 135 DECLARATION of David Schapira in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified

on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 136 DECLARATION of Ed Ableser in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/23/2008 137 DECLATION of Pamela Durbin in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT

DOCUMENT LINKAGE(KMG). (Entered: 09/23/2008)

09/23/2008 138 DECLARATION of Phil Lopes in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE(KMG). (Entered: 09/23/2008)

09/23/2008 139 DECLARATION of Jorge Garcia in Support of 124 Response (Opposition) to MOTION for Preliminary Injunction filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Shipman, Tanja) Modified on 9/24/2008 INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM (Affidavit) TO (Declaration). DOCKET TEXT MODIFIED FOR CORRECT DOCUMENT LINKAGE (KMG). (Entered: 09/23/2008)

09/25/2008 143 REPLY to Response to Motion re 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* filed by John McComish, Nancy

McLain, Tony Bouie. (Attachments: # 1 Affidavit Moll Dec., # 2 Exhibit Moll Dec., Ex. F.1, # 3 Affidavit Osborn Dec., # 4 Exhibit Osborn Dec., Ex. G.1, # 5 Exhibit Osborn Dec., Ex. G.2, # 6 Exhibit Osborn Dec. Ex. G.3 p1, # 7 Exhibit Osborn Dec. Ex. G.3 p2, # 8 Exhibit Osborn Dec. Ex. G.3 p3, # 9 Exhibit Osborn Dec. Ex. G.3 p4)(Dranias, Nicholas) (Entered: 09/25/2008)

09/25/2008 144 Additional Attachments to Main Document re 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs Continuation Osborn Dec., Ex. G.3* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Osborn Dec. Ex. G.3 p6, # 2 Exhibit Osborn Dec. Ex. G.3 p7, # 3 Exhibit Osborn Dec. Ex. G.3 p8, # 4 Exhibit Osborn Dec. Ex. G.3 p9, # 5 Exhibit Osborn Dec. Ex. G.3 p10, # 6 Exhibit Osborn Dec. Ex. G.3 p11, # 7 Exhibit Osborn Dec. Ex. G.3 p12)(Dranias, Nicholas) (Entered: 09/25/2008)

09/25/2008 145 DECLARATION of Dranias Sec. Supp. Dec. re 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Ex. H.1, Osborn Dep., # 2 Exhibit Ex.

H.2, Newman Dep, # 3 Exhibit Ex. H.3, Kennedy Dep, # 4 Exhibit Ex. H.4, Lang Dep, # 5 Exhibit Ex. H.5, McComish Dep., # 6 Exhibit Ex. H.6, George Dep., # 7 Exhibit Ex. H.7, Bouie Dep., # 8 Exhibit Ex. H.8, Becker Dep., # 9 Exhibit Ex. H.9, McLain Dep., # 10 Exhibit Ex. H.10, Def. Disc. Resp.)(Dranias, Nicholas) (Entered: 09/25/2008)

09/26/2008 147 Additional Attachments to Main Document re 143 Reply to Response to Motion., *Elec. Signed Osborn Dec.* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 09/26/2008)

09/26/2008 149 REPLY in Support re 37 MOTION for Preliminary Injunction *to Defendants* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Keller, Timothy) (Entered: 09/26/2008)

09/26/2008 150 DECLARATION of Timothy D. Keller in Support of Reply to Defendants in Support of Motion for Preliminary Injunction re 149 Reply in Support of Motion by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee filed by Dean Martin,

Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Exhibit Exhibits A-H, # 2 Exhibit Exhibits I-R)(Keller, Timothy) (Entered: 09/26/2008)

09/26/2008 151 REPLY in Support re 37 MOTION for Preliminary Injunction *to Defendant-Intervenor* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Keller, Timothy) (Entered: 09/26/2008)

09/26/2008 152 DECLARATION of Timothy D. Keller in Support of Plaintiff-Intervenors' Reply to Defendant-Intervenor in Support of Motion for Preliminary Injunction re 151 Reply in Support of Motion by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Exhibit Exhibits A-B)(Keller, Timothy) (Entered: 09/26/2008)

10/02/2008 157 MOTION to Strike re Plaintiffs' Reply to Briefs in Opposition to

Motion for Preliminary Injunction by Clean Elections Institute, Inc.. (Attachments: # 1 Text of Proposed Order)(Neubauer, Elisabeth) (Entered: 10/02/2008)

10/02/2008 158 AFFIDAVIT in Support re 157 MOTION to Strike re Plaintiffs' Reply to Briefs in Opposition to Motion for Preliminary Injunction *by Elisabeth J. Neubauer* filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 10/02/2008)

10/03/2008 161 ORDER that Defendant-Intervenor's 157 Motion to Strike is granted in part and denied part. Defendant-Intervenor shall have until 5:00pm 10/06/08 to file a surreply to Plas' Reply. Signed by Judge Roslyn O Silver on 10/03/08.(ESL) (Entered: 10/03/2008)

10/06/2008 163 RESPONSE in Opposition re 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 10/06/2008)

10/06/2008 164 AFFIDAVIT in Opposition re 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs In Support of Defendant Intervenor's Surreply* filed by Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit Exhibit A to

Declaration of Elisabeth J. Neubauer In Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Surreply In Opposition to Plaintiffs and Plaintiff-Intervenors' Motions for A Preliminary Injunction)(Neubauer, Elisabeth) (Entered: 10/06/2008)

10/09/2008 166 First MOTION to Amend/Correct re Plaintiffs' Motion for Leave to File Second Amended Complaint by John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Appendix Exhibit List, # 2 Exhibit Redlined Proposed Complaint, # 3 Exhibit "Clean" Proposed Second Amended Complaint, # 4 Text of Proposed Order Proposed Order)(Dranias, Nicholas) Modified on 10/10/2008, ORIGINAL AMENDED PLEADING INCORRECTLY ATTACHED TO THE MOTION. ATTORNEY NOTICED. (LSP). (Entered: 10/09/2008)

10/09/2008 167 LODGED Proposed Second Amended Complaint re: 166 First MOTION to Amend/Correct re Plaintiffs' Motion for Leave to File Second Amended Complaint. Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) Modified on 10/10/2008, COVER SHEET MISSING. ATTORNEY NOTICED. (LSP). (Entered: 10/09/2008)

10/09/2008	168	ORDER – A Preliminary/Permanent Injunction Hearing is set for 10/9/2008 at 9:00 A.M. The new hearing start time is 9:30 A.M. in Courtroom 604, 401 West Washington Street, Phoenix, AZ 85003 before Judge Roslyn O Silver. THIS IS A TIME CHANGE ONLY!! Signed by Judge Roslyn O Silver on 10/09/2008. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (ROS,) (Entered: 10/09/2008)
10/09/2008	170	Minute Entry. Proceedings held before Judge Roslyn O Silver: Preliminary Injunction Hearing held on 10/9/2008. The court takes under advisement 37 Motion for Preliminary Injunction and 43 Motion for Preliminary Injunction. Order to issue. (Court Reporter Elaine Cropper.)(CLB) (Entered: 10/09/2008)
10/10/2008	171	SUPPLEMENT of Supplement Regarding Undisbursed Matching Funds, Related Declaration and Exhibits re 159 Exhibit List, 43 First MOTION for Preliminary Injunction *filed by Original Plaintiffs* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 10/10/2008)
10/10/2008	172	SUPPLEMENT of Parties Joint Submission of Supplemental Exhibit 149 re 154 Exhibit List by Defendants

Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels. (Attachments: # 1 Exhibit Supplemental Exhibit 149)(Shipman, Tanja) (Entered: 10/10/2008)

10/10/2008 175 AMENDED DOCUMENT by John McComish, Nancy McLain, Tony Bouie. Amendment to 171 Supplement, *regarding Undisbursed Matching Funds*. (Dranias, Nicholas) (Entered: 10/10/2008)

10/14/2008 180 ORDER Defendants and Defendant-Intervenors may file a response to Plaintiff's MOTION for Leave to File Second Amended Complaint within 10 days of this order. Signed by Judge Roslyn O Silver on 10/14/08. (LSP) (Entered: 10/14/2008)

10/14/2008 181 ORDER denying 43 Plaintiff's Motion for Preliminary Injunction. Findings of Fact and Conclusions of Law will follow this Order no later than 10/17/08. Signed by Judge Roslyn O Silver on 10/14/08.(LSP) (Entered: 10/14/2008)

10/17/2008 185 FINDINGS OF FACT AND CONCLUSIONS OF LAW – Plaintiffs have shown a very strong likelihood of success on the merits. However, given the extraordinary balance of the harms required in the context of an ongoing election, Plaintiffs have

not met their burden in showing that they are entitled to a preliminary injunction. For this reason, Plaintiffs' Motion 43 was denied. Signed by Judge Roslyn O Silver on 10/17/08. (LSP) (Entered: 10/17/2008)

10/28/2008 188 RESPONSE in Opposition re 166 First MOTION to Amend/Correct re Plaintiffs' Motion for Leave to File Second Amended Complaint filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 10/28/2008)

10/30/2008 190 ORDER pursuant to 189 Stipulation For Extension of Time To Answer Complaint: Dfts and Dft-Intervenor shall not answer Pla's First or Second Amended Complaints or Pla-Intervenors' Proposed Complaint In Intervention before this Court enters its order on Plas' Ex Parte Motion for Leave to File Second Amended Complaint. FURTHER ORDERED the deadline for Dfts and Dft-Intervenor to answer or otherwise respond to Plas' First or Second Amended Complaint, and Pla-Intervenors' Proposed Complaint In Intervention, shall be suspended until ten (10) days from the date of the entry of the Court's order on Plas' Ex Parte Motion for Leave to File Second Amended Complaint. Signed by Judge Roslyn O Silver on

10/30/08. (KMG,) (Entered: 10/30/2008)

11/03/2008 191 REPLY in Support re 166 First MOTION to Amend/Correct re Plaintiffs' Motion for Leave to File Second Amended Complaint filed by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 11/03/2008)

11/04/2008 192 TRANSCRIPT of Proceedings re: Preliminary Injunction Hearing held on 10/9/08 before Judge Roslyn O Silver. Court Reporter: Elaine Cropper. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/25/2008. Redacted Transcript Deadline set for 12/5/2008. Release of Transcript Restriction set for 2/2/2009. (BAS,) (Entered: 11/04/2008)

05/11/2009 259 ORDER granting in part and denying in part 166 Plaintiff's Motion to Amend. Plaintiffs may not amend their Complaint to include proposed 13-16. All other proposed amendments are allowable. Signed by Judge Roslyn O Silver on 5/11/09.(LSP) (Entered: 05/11/2009)

05/11/2009	260	AMENDED COMPLAINT *Second Amended Complaint* against Jan Brewer, Clean Elections Institute, Inc., Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, filed by John McComish, Nancy McLain, Tony Bouie.(Dranias, Nicholas) (Entered: 05/11/2009)
05/19/2009	269	MOTION to File Amicus Curiae *Brief on Summary Judgment* by Center for Competitive Politics. (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order, # 3 Corporate Dsclosure Statement)(Cox, Reid) (Entered: 05/19/2009)
05/26/2009	271	*DEFENDANTS* ANSWER to 58 Complaint *IN INTERVENTION* by Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Lori S Daniels, Ken Bennett.(Shipman, Tanja) Modified on 5/27/2009 (DMT,). DOCKET TEXT MODIFIED TO IDENTIFY CORRECT FILER. (Entered: 05/26/2009)
05/26/2009	272	*Defendants* ANSWER to 260 Amended Complaint, *(Second Amended Complaint)* by Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Lori S Daniels, Ken Bennett.(Shipman, Tanja) Modified on 5/27/2009 (DMT,). DOCKET TEXT MODIFIED TO

IDENTIFY CORRECT FILER. (Entered: 05/26/2009)

05/26/2009 273 *Defendant-Intervenor Clean Elections Institute, Inc.'s* **ANSWER** to Complaint *(Second Amended)* by Clean Elections Institute, Inc..(Sandhu, Puneet) (Entered: 05/26/2009)

05/26/2009 274 *Defendant Intervenor's* **ANSWER** to Complaint *of Plaintiff Intervenors* by Clean Elections Institute, Inc..(Sandhu, Puneet) (Entered: 05/26/2009)

06/03/2009 280 **RESPONSE** in Opposition re 269 **MOTION** to File Amicus Curiae *Brief on Summary Judgment* filed by Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/03/2009)

06/08/2009 281 **REPLY** in Support re 269 **MOTION** to File Amicus Curiae *Brief on Summary Judgment* filed by Center for Competitive Politics. (Attachments: # 1 Exhibit)(Cox, Reid) (Entered: 06/08/2009)

06/10/2009 284 **ORDER** granting 269 Motion to File Amicus Curiae Brief on Summary Judgment, which shall be no longer than seventeen (17) pages, consistent with the page length for motions specified in the Local Rules of Civil Procedure for the District of Arizona; and shall be served and filed no later than seven (7) days (excluding intermediate Saturdays, Sundays, and legal holidays) after

the filing deadline for the parties' and intervenors' motions for summary judgment. Any party who wishes to may file a Response to the Center's brief, not to exceed seventeen (17) pages. Signed by Judge Roslyn O Silver on 6/10/09.(DMT,) (Entered: 06/10/2009)

06/12/2009 285 First MOTION for Summary Judgment by Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 286 MEMORANDUM re: iso Motion for Summary Judgment re 285 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 287 First MOTION for Summary Judgment by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 288 First MOTION for Summary Judgment by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Memo in support of Summary Judgment, # 2 Statement of Facts, # 3 Declaration in support of Motion for Summary Judgment, # 4 Exhibit Ex. 1-10, # 5 Exhibit Ex. 11-18, # 6 Exhibit Ex.

19-24, # 7 Exhibit Ex. 46-59, # 8 Exhibit Ex. 60-79)(Maurer, William) (Entered: 06/12/2009)

06/12/2009 290 STATEMENT of Separate Statement re 285 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 291 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Proposed Order* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 292 DECLARATION of Puneet Sandhu re 285 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 293 MOTION for Summary Judgment by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 06/12/2009)

06/12/2009 294 Additional Attachments to Main Document re 288 First MOTION for Summary Judgment *Exhibits 80-184* by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments:

1 Exhibit Ex. 91-130, # 2 Exhibit Ex. 131-184)(Maurer, William) (Entered: 06/12/2009)

06/12/2009 295 DECLARATION re 293 MOTION for Summary Judgment *Declaration of Tanja K. Shipman* by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, #3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6, # 7 Exhibit Exhibit 7, # 8 Exhibit Exhibit 8, # 9 Exhibit Exhibit 9, # 10 Exhibit Exhibit 10)(Shipman, Tanja) (Entered: 06/12/2009)

06/12/2009 296 DECLARATION of Declaration of Todd Lang re 293 MOTION for Summary Judgment by Defendants Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5)(Shipman, Tanja) (Entered: 06/12/2009)

06/12/2009 297 MEMORANDUM re: Memorandum of Law Supporting Pla MSJ re 287 First MOTION for Summary Judgment by Plaintiffs John McComish,

Nancy McLain, Toay Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 298 Additional Attachments to Main Document re 292 Declaration *Exhibit A (part 1 of 2)* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 299 Additional Attachments to Main Document re 292 Declaration *Exhibit A (part 2 of 2)* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 300 Additional Attachments to Main Document re 292 Declaration *Exhibit B* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 301 Additional Attachments to Main Document re 292 Declaration *Exhibit C* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 302 Additional Attachments to Main Document re 292 Declaration *Exhibit D* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 303 Additional Attachments to Main Document re 292 Declaration *Exhibit E* by Intervenor Defendant Clean

Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 304 Additional Attachments to Main Document re 292 Declaration *Exhibit F* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 305 Additional Attachments to Main Document re 292 Declaration *Exhibit G* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 306 Additional Attachments to Main Document re 292 Declaration *Exhibit H* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 307 Additional Attachments to Main Document re 292 Declaration *Exhibit I* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 308 Additional Attachments to Main Document re 292 Declaration *Exhibit J* by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 309 Additional Attachments to Main Document re 292 Declaration by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit K, # 2 Exhibit L, # 3 Exhibit M, # 4 Exhibit N, # 5 Exhibit

O, # 6 Exhibit P, # 7 Exhibit Q, # 8 Exhibit R, # 9 Exhibit S, # 10 Exhibit T, # 11 Exhibit U, # 12 Exhibit V, # 13 Exhibit W, # 14 Exhibit X, # 15 Exhibit Y, # 16 Exhibit Z, # 17 Exhibit AA, # 18 Exhibit BB, # 19 Exhibit CC)(Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 310 DECLARATION of Donald Green re 285 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 311 Additional Attachments to Main Document re 310 Declaration by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit A)(Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 312 DECLARATION of Angela Migally re 285 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 313 Additional Attachments to Main Document re 312 Declaration by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit 1)(Sandhu, Puneet) (Entered: 06/12/2009)

06/12/2009 314 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Separate Statement of Facts* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 315 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Exhibit List* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 316 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Exhibit 1 McComish Dec* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 317 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Ex. 2 McLain Dec* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 318 Additional Attachments to Main Document *Pla Ex 3 (Bouie Dec)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 319 Additional Attachments to Main Document re 287 First MOTION for

Summary Judgment *Pla. Ex. 7 (Dramias Dec.)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dramias, Nicholas) (Entered: 06/12/2009)

06/12/2009 320 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Plaintiffs Ex. 13 (Sinema Dep.)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dramias, Nicholas) (Entered: 06/12/2009)

06/12/2009 321 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla Ex 16 (Green Dep)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dramias, Nicholas) (Entered: 06/12/2009)

06/12/2009 322 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla Ex 17 (Mayer Dep)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dramias, Nicholas) (Entered: 06/12/2009)

06/12/2009 323 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla Ex. 8 (Lujan Dep)* by Plaintiffs John McComish, Nancy McLain. (Attachments: # 1 Exhibit Lujan Ex. 1)(Dramias, Nicholas) (Entered: 06/12/2009)

06/12/2009 324 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla Ex. 4 Osborn Dec* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Osborn Ex. 1, # 2 Exhibit Osborn Ex. 2, #3 Exhibit Osborn Ex. 3)(Dranias, Nicholas) (Entered: 06/12/2009)

06/12/2009 325 Additional Attachments to Main Document re 324 Additional Attachments to Main Document, *Osborn Exhibit 4* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Osborn Exhibit 5, #2 Exhibit Osborn Ex. 6, # 3 Exhibit Osborn Ex. 7, # 4 Exhibit Osborn Exhibit 8, # 5 Exhibit Osborn Exhibit 9, # 6 Exhibit Osborn Exhibit 10, # 7 Exhibit Osborn Exhibit 11, # 8 Exhibit Osborn Exhibit 12, # 9 Exhibit Osborn Exhibit 13, # 10 Exhibit Osborn Exhibit 14)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 326 Additional Attachments to Main Document *Subach CCEC Dec* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Subach CCEC Exhibits 2-6, # 3 Exhibit Subach CCEC Exhibits 7-13)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 327 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Subach CEI Dec inc Ex1-9* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 328 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Plaintiffs MSJ Ex 9 Ehst Dep* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Ehst Ex 1, # 2 Exhibit Ehst Ex 2, # 3 Exhibit Ehst Ex 5, # 4 Exhibit Ehst Exhibit 6)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 329 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Plaintiffs MSJ Exhibit 10* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Ruiz Dep. Ex: 2, # 2 Exhibit Ruiz Ex. 3, # 3 Exhibit Ruiz Ex 4, # 4 Exhibit Ruiz Ex 5, # 5 Exhibit Ruiz Ex 6, # 6 Exhibit Ruiz # 7 Exhibit Ruiz Ex 9, # 8 Exhibit Ruiz Ex 10, # 9 Exhibit Ruiz Ex 11, # 10 Exhibit Ruiz Ex 13)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 330 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla MSJ Ex 11*

(*McGee Dep*) by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit CCEC McGee Ex 17, # 2 Exhibit CCEC McGee Ex 22, #3 Exhibit CCEC McGee Ex 24, # 4 Exhibit CCEC McGee Ex 25, # 5 Exhibit CCEC McGee Ex 27)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 331 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla MSJ Ex 12 (Lang Dep)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Lang Ex 30)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 332 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla MSJ Ex 14 (Daniels Dep)* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Exhibit Daniels Ex 7, # 2 Exhibit Daniels # 3 Exhibit Daniels Ex 10, # 4 Exhibit Daniels Ex 12, # 5 Exhibit Daniels Ex 13, #6 Exhibit Daniels Ex 15, #1 Exhibit Daniels Ex 16, # 8 Exhibit Daniels Ex 17)(Dranias, Nicholas) (Entered: 06/13/2009)

06/13/2009 333 Additional Attachments to Main Document re 287 First MOTION for Summary Judgment *Pla MSJ Ex 15 (Hoffman Dep)* by Plaintiffs John

McComish, Nancy McLain, Tony Bouie. (Attachments: #1 Exhibit Hoffman Ex 5, # 2 Exhibit Hoffman Ex 6, # 3 Exhibit Hoffman Ex 9, # 4 Exhibit Hoffman Ex 10)(Dranias, Nicholas) (Entered: 06/13/2009)

06/15/2009 334 Additional Attachments to Main Document re 292 Declaration by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit F)(Sandhu, Puneet) (Entered: 06/15/2009)

06/15/2009 335 ERRATA re 285, First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc.. (Sandhu, Puneet) (Entered: 06/15/2009)

06/23/2009 336 BRIEF re 288 First MOTION for Summary Judgment, 287 First MOTION for Summary Judgment, 285 First MOTION for Summary Judgment, 293 MOTION for Summary Judgment by Amicus Center for Competitive Politics. (Cox, Reid) (Entered: 06/23/2009)

07/02/2009 338 Additional Attachments to Main Document re 288 First MOTION for Summary Judgment *Exhibits 24-45* by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action

Committee. (Keller, Timothy) (Entered: 07/02/2009)

07/02/2009 339 ERRATA *regarding Exhibits 25-45* by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Exhibit Exhibit 25-45)(Keller, Timothy) (Entered: 07/02/2009)

07/17/2009 343 RESPONSE to Motion re 285 First MOTION for Summary Judgment *by Clean Elections Institute* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Maurer, William) (Entered: 07/17/2009)

07/17/2009 344 RESPONSE to Motion re 293 MOTION for Summary Judgment *by Ken Bennett, et al.* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Keller, Timothy) (Entered: 07/17/2009)

07/17/2009 345 RESPONSE re 290 Statement *Defendant &Defendant-Intervenor's Statement of Undisputed Facts* by Intervenor Plaintiffs Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action

Committee. (Attachments: # 1 Exhibit Ex. A-C, # 2 Exhibit Ex. D, # 3 Exhibit Ex. E-I, # 4 Exhibit Ex. J-M, # 5 Exhibit Ex. N Pt. 1, # 6 Exhibit Ex. N Pt. 2, # 7 Exhibit Ex. N Pt. 3, # 8 Exhibit Ex. O-U)(Keller, Timothy) (Entered: 07/17/2009)

07/17/2009 346 RESPONSE to Motion re 285 First MOTION for Summary Judgment, 293 MOTION for Summary Judgment filed by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 347 MEMORANDUM re: Plaintiffs' Combined Brief in Opposition to Defs/Def-Int MSJs re 346 Response to Motion by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 348 STATEMENT of Response to Defs/Def-Int Joint Statement of Facts re 346 Response to Motion by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 349 Exhibit List *for Pla. Response to Defs/Def-Int Motions for Summary Judgment* by John McComish, Nancy McLain, Tony Bouie.. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 350 RESPONSE in Opposition re 288 First MOTION for Summary Judgment, 287 First MOTION for

Summary Judgment filed by Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 07/17/2009)

07/17/2009 351 DECLARATION of Ex. 18: Ober Dec. re 346 Response to Motion by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 352 DECLARATION of Ex. 19: Tsontakis Dec. re 346 Response to Motion by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 353 DECLARATION of Ex. 20: Dranias Dec. re 346 Response to Motion by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 354 RESPONSE in Opposition re 288 First MOTION for Summary Judgment filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 355 Additional Attachments to Main Document re 346 Response to Motion *Ex. 21: Bouie Dep. 82* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 356 Additional Attachments to Main Document re 346 Response to Motion

Ex: 22: Daniels Dep. S2 by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 357 Additional Attachments to Main Document re 346 Response to Motion *Ex. 23: Green Dep. S2* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 358 DECLARATION of Declaration of Michael Valder in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motion for Summary Judgment re 354 Response in Opposition to Motion by Intervenor Defendant Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 359 Additional Attachments to Main Document re 346 Response to Motion *Ex. 24: Osborn Dep. (2009) S2* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 360 DECLARATION of Declaration of Donald Green in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motion for Summary Judgment re 354 Response in Opposition to

Motion by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit 1-7 to Declaration of Donald Green)(Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 361 Additional Attachments to Main Document re 346 Response to Motion *Ex. 25: Mayer Dep. S2* by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/17/2009)

07/17/2009 362 DECLARATION of Declaration of Elisabeth J. Neubauer in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Opposition to Plaintiffs' and Plaintiff-Intervenors' Motions for Summary Judgment re 354 Response in Opposition to Motion by Intervenor Defendant Clean Elections Institute, Inc.. (Attachments: # 1 Exhibit A-J to Declaration of Elisabeth J. Neubauer, # 2 Exhibit K-Y to Declaration of Elisabeth J. Neubauer)(Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 363 STATEMENT of DEFENDANTS AND DEFENDANT-INTERVENORS JOINT RESPONSE TO PLAINTIFFS SEPARATE STATEMENT re 314 Additional Attachments to Main Document, 287 First MOTION for Summary Judgment, 297 Memorandum by Intervenor Defendant Clean Elections Institute, Inc., Defendants

Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 07/17/2009)

07/17/2009 364 STATEMENT of Defendants and Defendant-Intervenor's Joint Response to Plaintiff-Intervenors' Separate Statement re 288 First MOTION for Summary Judgment by Intervenor Defendant Clean Elections Institute, Inc., Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fainnan, Donald Lindholm, Lori S Daniels, Ken Bennett. (Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 365 RESPONSE in Opposition re 287 First MOTION for Summary Judgment filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 07/17/2009)

07/17/2009 366 DECLARATION of COLLEEN MCGEE IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' AND PLAINTIFFINTERVENORS' MOTIONS FOR SUMMARY JUDGMENT re 363 Statement, 350 Response in Opposition to Motion by Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 07/17/2009)

07/17/2009	367	DECLARATION of OF DANIEL RUIZ II IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' AND PLAINTIFFINTERVENORS' MOTIONS FOR SUMMARY JUDGMENT re 363 Statement, 350 Response in Opposition to Motion by Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 07/17/2009)
07/17/2009	368	DECLARATION of DR. KENNETH R. MAYER IN SUPPORT OF DEFENDANTS RESPONSE TO PLAINTIFFS AND PLAINTIFF-INTERVENORS MOTIONS FOR SUMMARY JUDGMENT re 363 Statement, 350 Response in Opposition to Motion by Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Attachments: # 1 Exhibit A)(Shipman, Tanja) (Entered: 07/17/2009)
07/17/2009	369	DECLARATION of TODD E. LANG IN SUPPORT OF DEFEDANTS' RESPONSE TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT re 363 Statement, 350 Response in Opposition to Motion by Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald

Lindholm, Lori S Daniels, Ken Bennett. (Attachments: # 1 Exhibit A-F, # 2 Exhibit G Annual Reports 2000-2004 (part 1 of 2), # 3 Exhibit G Annual Reports 2005-2008 (part 2 of 2))(Shipman, Tanja) (Entered: 07/17/2009)

07/17/2009 370 DECLARATION of TANJA K. SHIPMAN IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT re 363 Statement, 350 Response in Opposition to Motion by Defendants Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Attachments: # 1 Exhibit 11-26, # 2 Exhibit 27-41, # 3 Exhibit 42-50)(Shipman, Tanja) (Entered: 07/17/2009)

07/24/2009 371 MOTION to File Amicus Curiae by Campaign Legal Center. (Attachments: # 1 Amicus Memorandum, # 2 Amicus Corporate Disclosure Statement, # 3 Amicus Proposed Order)(Ryan, Paul) (Entered: 07/24/2009)

07/24/2009 372 RESPONSE in Opposition re 371 MOTION to File Amicus Curiae filed by John McComish, Nancy McLain, Tony Bouie. (Dramas, Nicholas) (Entered: 07/24/2009)

07/28/2009	373	First MOTION for Leave to File Motion for Leave to File Separate Response to Defendants Joint Statement of Additional Facts by John McComish, Nancy McLain, Tony Bouie. (Attachments: # 1 Text of Proposed Order)(Dranias, Nicholas) (Entered: 07/28/2009)
07/31/2009	377	MEMORANDUM re: Memorandum of Law in Support of Motion for Leave to File re 373 First MOTION for Leave to File Motion for Leave to File Separate Response to Defendants Joint Statement of Additional Facts by Plaintiffs John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/31/2009)
07/31/2009	378	REPLY to Response to Motion re 288 First MOTION for Summary Judgment *Reply to Defendants' Response to Plaintiff-Intervenors' Motion for Summary Judgment* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Maurer, William) (Entered: 07/31/2009)
07/31/2009	379	REPLY to Response to Motion re 288 First MOTION for Summary Judgment *Plaintiff-Intervenors' Reply to Defendant-Intervenor's Memo in Opposition to Motions for Summary Judgment* filed by Dean Martin, Robert Burns, Rick Murphy, Arizona

Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee. (Attachments: # 1 Attachment A, # 2 Attachment B, # 3 Attachment C, # 4 Exhibit Ex. 185-189, # 5 Exhibit Ex. 190-197)(Keller, Timothy) (Entered: 07/31/2009)

07/31/2009 380 REPLY in Support re 285 First MOTION for Summary Judgment filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 07/31/2009)

07/31/2009 381 DECLARATION of Declaration of Bart Turner in Support of Defendant-Intervenor Clean Elections Institute, Inc.'s Reply in Support of Motion for Summary Judgment re 380 Reply in Support of Motion by Intervenor Defendant Clean Elections Institute, Inc. filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 07/31/2009)

07/31/2009 382 REPLY in Support re 293 MOTION for Summary Judgment filed by Jan Brewer, Gary Scaramazzo, Royann J Parker, Jeffrey L Fairman, Donald Lindholm, Lori S Daniels, Ken Bennett. (Shipman, Tanja) (Entered: 07/31/2009)

07/31/2009 383 LODGED Proposed Separate Reply to Def Additional Facts re: 373 First MOTION for Leave to File Motion for Leave to File Separate Response

to Defendants Joint Statement of Additional Facts. Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/31/2009)

07/31/2009 384 REPLY in Support re 287 First MOTION for Summary Judgment *to CEI Response* filed by John McComish, Nancy McLain, Tony Bouie. (Attachments: #1 Affidavit)(Dranias, Nicholas) (Entered: 07/31/2009)

07/31/2009 385 REPLY in Support re 287 First MOTION for Summary Judgment *Reply to CCEC Response* filed by John McComish, Nancy McLain, Tony Bouie. (Dranias, Nicholas) (Entered: 07/31/2009)

08/03/2009 387 AMENDED DOCUMENT by Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy. *Praecipe to David Primo's Declaration in Support of Motion for Summary Judgment*. (Attachments: # 1 Corrected Page)(Maurer, William) (Entered: 08/03/2009)

08/11/2009 388 ORDER the Campaign Legal Center's Motion 371 is GRANTED and the Campaign Legal Center Amicus

Curiae Memorandum in Opposition to Plaintiffs' and Plaintiff-Intervenors' Motions for Summary Judgment shall be filed in this case. Signed by Judge Roslyn O Silver on 8/11/09. (KMG) (Entered: 08/11/2009)

08/11/2009 389 RESPONSE (Memorandum) in Opposition to Plas re 288 First MOTION for Summary Judgment and Plaintiff-Intervenors' 287 First MOTION for Summary Judgment filed by Campaign Legal Center. (KMG) (Entered: 08/11/2009)

08/14/2009 391 RESPONSE to Motion re 373 First MOTION for Leave to File Motion for Leave to File Separate Response to Defendants Joint Statement of Additional Facts filed by Ken Bennett, Jan Brewer, Clean Elections Institute, Inc., Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) (Entered: 08/14/2009)

08/14/2009 392 REPLY to Response to Motion re 373 First MOTION for Leave to File Motion for Leave to File Separate Response to Defendants Joint Statement of Additional Facts filed by Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 08/14/2009)

08/28/2009 393 First MOTION to Supplement *the Record with New Persuasive Precedent*

by Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 08/28/2009)

08/28/2009 394 LODGED Proposed Decision in Green Party of Connecticut v. Garfield cv 3:06cv1030 re: 393 First MOTION to Supplement *the Record with New Persuasive Precedent*. Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 08/28/2009)

08/28/2009 395 MEMORANDUM re: Memorandum in support of motion to supplement re 393 First MOTION to Supplement *the Record with New Persuasive Precedent* by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Attachments: # 1 Text of Proposed Order)(Dranias, Nicholas) (Entered: 08/28/2009)

08/28/2009 397 Notice re Notice of Supplemental Authority by Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy (Attachments: # 1 Attachment A)(Maurer, William) (Entered: 08/28/2009)

09/04/2009 398 RESPONSE to Motion re 393 First MOTION to Supplement *the Record with New Persuasive Precedent*

Defendants and Defendant-Intervenor's Joint Response to Plaintiffs' Motion to Supplement the Record filed by Ken Bennett, Clean Elections Institute, Inc., Lori S Daniels, Jeffrey L Fairman, Royann J Parker, Gary Scaramazzo. (Davis-Denny, Grant) (Entered: 09/04/2009)

09/18/2009 399 Second MOTION for Leave to File *Supplemental Authority* by Tony Bouie, John McComish, Nancy McLain. (Attachments: # 1 Text of Proposed Order)(Dranias, Nicholas) (Entered: 09/18/2009)

09/18/2009 400 LODGED Proposed U.S. Court of Appeals Washington, D.C. Circuit re: 399 Second MOTION for Leave to File *Supplemental Authority*. Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by Tony Bouie, John McComish, Nancy McLain (Dranias, Nicholas) (Entered: 09/18/2009)

09/18/2009 401 MEMORANDUM re 399 Second MOTION for Leave to File *Supplemental Authority* by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 09/18/2009)

09/28/2009 403 RESPONSE to Motion re 399 Second MOTION for Leave to File *Supplemental Authority Defendants and Defendant-Intervenor's Joint Response*

to Plaintiffs' Second Motion to Supplement the Record filed by Ken Bennett, Clean Elections Institute, Inc., Lori S Daniels, Jeffrey L Fairman, Royann J Parker, Gary Scaramazzo. (Davis-Denny, Grant) (Entered: 09/28/2009)

10/29/2009 406 ORDER. Dft Secretary of State shall submit a brief addressing the issues outlined above. That brief shall be filed no later than 11/12/09 and must not exceed ten pages in length. Dft Clean Elections Institute, Inc. may submit a brief under the same requirements. Pla John McComish shall file a responsive brief. That response shall be filed no later than 11/19/09 and shall not exceed ten pages in length. Plas represented by separate counsel may also submit responses under the same requirements. No replies shall be filed. Signed by Judge Roslyn O Silver on 10/29/09. (NOTE: See attached pdf for complete details) (ESL) (Entered: 10/29/2009)

11/12/2009 409 SUPPLEMENT of DEFENDANTS SUPPLEMENTAL BRIEF ADDRESSING ISSUES RAISED IN OCTOBER 29, 2009 COURT ORDER re 406 Order., by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker,

Gary Scaramazzo. (Shipman, Tanja) (Entered: 11/12/2009)

11/12/2009 410 SUPPLEMENT of Supplemental Brief in Support of Motion for Summary Judgment re 406 Order,, by Intervenor Defendant Clean Elections Institute, Inc.. (Neubauer, Elisabeth) Modified on 11/13/2009 (SAT). DOCUMENT NOT IN COMPLIANCE WITH LRCiv 7.1(c). ATTORNEY NOTICED. (Entered: 11/12/2009)

11/18/2009 411 RESPONSE re 406 Order,, *Supplemental Brief in Support of Cross-Motion for Summary Judgment* by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 11/18/2009)

11/19/2009 412 SUPPLEMENT of Response to Defendant and Defendant-Intervenor's Supplemental Briefs re 406 Order,, 410 Supplement, 409 Supplement, by Intervenor Plaintiffs Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy. (Keller, Timothy) (Entered: 11/19/2009)

11/30/2009 413 Notice re Notice of Supplemental Authority by Ken Bennett, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo (Attachments: # 1

Exhibit Attachment A)(Shipman, Tanja) (Entered: 11/30/2009)

12/02/2009 414 OBJECTION re 413 Other Notice filed by Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 12/02/2009)

12/09/2009 415 Joinder re 413 Other Notice *of Supplemental Authority and Response to Plaintiffs' Objection* by Intervenor Defendant Clean Elections Institute, Inc. filed by Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 12/09/2009)

01/05/2010 416 Second MOTION for Preliminary Injunction by Tony Bouie, John McComish, Nancy McLain. (Attachments: # 1 Text of Proposed Order)(Dranias, Nicholas) (Entered: 01/05/2010)

01/05/2010 417 MEMORANDUM re: Supporting Plaintiffs' Second Motion for Preliminary Injunction re 416 Second MOTION for Preliminary Injunction by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 01/05/2010)

01/06/2010 419 ORDER re Hearing set as to 288 First MOTION for Summary Judgment, 287 First MOTION for Summary Judgment, 285 First MOTION for Summary Judgment, 293 MOTION for Summary Judgment: Motion Hearing set for 1/15/2010 at

		01:30PM before Judge Roslyn O Silver. FURTHER ORDERED dfts shall respond to the 2nd motion for preliminary injunction 416 no later than 1/11/10. Plas shall file a reply no later than 1/13/10. Signed by Judge Roslyn O Silver on 1/6/2010. (LAD) (Entered: 01/06/2010)
01/06/2010	420	Second MOTION for Preliminary Injunction by Rick Murphy. (Attachments: # 1 Memorandum in Support of 2nd Motion for Preliminary Injunction, #2 Affidavit Decl. Murphy in Support of 2nd Motion for Preliminary Injunction, # 3 Text of Proposed Order)(Keller, Timothy) (Entered: 01/06/2010)
01/11/2010	421	RESPONSE to Motion re 420 Second MOTION for Preliminary Injunction, 416 Second MOTION for Preliminary Injunction filed by Ken Bennett, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) (Entered: 01/11/2010)
01/11/2010	422	RESPONSE in Opposition re 416 Second MOTION for Preliminary Injunction and 420 Second Motion for Prelimary Injuction filed by Clean Elections Institute, Inc.. (Davis-Denny, Grant) Modified on 1/15/2010 (DMT,). DOCKET TEXT MODIFIED

TO CORRECT DOCUMENT LINKAGE. (Entered: 01/11/2010)

01/11/2010 423 DECLARATION of OF TODD F. LANG IN SUPPORT OF DEFENDANTS RESPONSE TO PLAINTIFFS AND PLAINTIFF-INTERVENOR RICK MURPHYS SECOND MOTIONS FOR PRELIMINARY INJUNCTION re 421 Response to Motion by Defendants Ken Bennett, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Attachments: # 1 Exhibit 1)(Shipman, Tanja) (Entered: 01/11/2010)

01/11/2010 424 DECLARATION of OF TANJA K. SHIPMAN IN SUPPORT OF DEFENDANTS RESPONSE TO PLAINTIFFS AND PLAINTIFF-INTERVENOR RICK MURPHYS SECOND MOTIONS FOR PRELIMINARY INJUNCTION re 421 Response to Motion by Defendants Ken Bennett, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Attachments: #1 Exhibit 1-15)(Shipman, Tanja) (Entered: 01/11/2010)

01/11/2010 425 DECLARATION of GOVERNOR JAN BREWER 2010 COMMITTEE re 421 Response to Motion by Defendants Ken Bennett, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary

Scaramazzo. (Shipman, Tanja) (Entered: 01/11/2010)

01/12/2010 426 ORDER, the parties shall submit simultaneous briefing addressing the issues ntioned in this order no later than 5 p.m. on January 13, 2010; the parties hall submit responses no later than 5 p.m. on January 14, 2010; no replies shall be filed. Signed by Judge Roslyn O Silver on 1/12/10. (REW,) (Entered: 01/12/2010)

01/13/2010 429 Notice re Supplemental Authority by Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo (Attachments: # 1 Exhibit Attachment A)(Shipman, Tanja) (Entered: 01/13/2010)

01/13/2010 430 REPLY in Support re 420 Second MOTION for Preliminary Injunction filed by Tony Bouie, John McComish, Nancy McLain. (Attachments: # 1 Affidavit Margaret Dugan, # 2 Affidavit Tony Bouie, # 3 Affidavit Marcus Osborn, # 4 Affidavit John Munger, # 5 Affidavit Buz Mills)(Dranias, Nicholas) (Entered: 01/13/2010)

01/13/2010 431 BRIEF re: Supplemental Brief Addressing Court Order re 426 Order, by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Dranias,

Nicholas) Modified on 1/14/2010 (TLJ). INCORRET EVENT SELECTED. ENTRY MODIFIED FROM MEMORANDUM TO BRIEF. (Entered: 01/13/2010)

01/13/2010 432 MEMORANDUM re: Plaintiff-Intervenors' supplemental briefing on scope of relief and reply in support of 2nd motion for summary judgment. re 420 Second MOTION for Preliminary Injunction, 426 Order, by Intervenor Plaintiffs Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy. (Attachments: # 1 Affidavit Declaraton of Dean Martin)(Maurer, William) (Entered: 01/13/2010)

01/13/2010 433 SUPPLEMENT of Defendant-Intervenor's Supplemental Briefing Regarding Possible Relief re 426 Order, by Intervenor Defendant Clean Elections Institute, Inc.. (Neubauer, Elisabeth) (Entered: 01/13/2010)

01/13/2010 434 BRIEF re DEFENDANTS BRIEF ADDRESSING ISSUES RAISED IN THE COURTS 1/12/10 ORDER re 426 Order, by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) Modified on

1/14/2010 (TLJ). INCORRECT EVENT SELECTED. ENTRY MODIFIED FROM SUPPLEMENT TO BRIEF. (Entered: 01/13/2010)

01/13/2010 435 DECLARATION of David Lujan re 434 Supplement by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) Modified on 1/14/2010 (TLJ). INCORRECT EVENT SELECTED. ENTRY MODIFIED FROM AFFIDAVIT TO DECLARATION. (Entered: 01/13/2010)

01/14/2010 436 RESPONSE re 433 Supplement, 434 Supplement, 426 Order, by Plaintiffs Tony Bouie, John McComish, Nancy McLain. (Dranias, Nicholas) (Entered: 01/14/2010)

01/14/2010 437 RESPONSE re 433 Supplement, 426 Order, *Re Possible Relief* by Intervenor Defendant Clean Elections Institute, Inc.. (Davis Denny, Grant) (Entered: 01/14/2010)

01/14/2010 438 RESPONSE re 433 Supplement, 434 Supplement, *to Defendant and Defendant-Intervenor's briefing on scope of relief* by Intervenor Plaintiffs Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy. (Maurer, William) (Entered: 01/14/2010)

01/14/2010	439	RESPONSE re 436 Response 432 Memorandum, by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) (Entered: 01/14/2010)
01/14/2010	440	DECLARATION of Declaration of Tanja K Shipman re 439 Response by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Attachments: # 1 Exhibit Exhibit 1)(Shipman, Tanja) (Entered: 01/14/2010)
01/14/2010	441	DECLARATION of Declaration of Carl Seel re 439 Response by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Shipman, Tanja) (Entered: 01/14/2010)
01/14/2010	442	PROPOSED ORDER from the Chambers of Judge Roslyn O Silver (REW,) (Entered: 01/14/2010)
01/15/2010	443	ORDER denying Plaintiffs' 420 Motion for Preliminary Injunction Signed by Judge Roslyn O Silver on 1/15/10.(REW,) (Entered: 01/15/2010)
01/15/2010	444	Minute Entry. Proceedings held before Judge Roslyn O Silver: Motion Hearing held on 1/15/2010

regarding documents 285, 287, 288, 293, 373, 393, 399, 404, 416, and 418. IT IS ORDERED all documents are taken under advisement. Further briefing is ordered as set forth on the record. Order to issue. (Court Reporter Elaine Cropper.)(CLB) (Entered: 01/15/2010)

01/18/2010 445 SUPPLEMENT of DEFENDANTS SUPPLEMENTAL BRIEF REGARDING IMPLEMENTING INJUNCTION LIMITED TO PERSONAL MONIES by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (O'Grady, Mary) (Entered: 01/18/2010)

01/18/2010 446 DECLARATION of DECLARATION OF TODD F. LANG IN SUPPORT OF DEFENDANTS SUPPLEMENTAL BRIEF REGARDING IMPLEMENTING INJUNCTION LIMITED TO PERSONAL MONIES re 445 Supplement by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Lindholm, Royann J Parker, Gary Scaramazzo. (Attachments: # 1 Exhibit Exhibit 1)(O'Grady, Mary) (Entered: 01/18/2010)

01/18/2010 447 RESPONSE to Defendants' Supplemental Brief Regarding Scope of

Proposed Injunction re 445 Supplement by Intervenor Plaintiffs Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin, Rick Murphy (Maurer, William) Modified on 1/19/2010 (TLJ). INCORRECT EVENT SELECTED. ENTRY MODIFIED FROM SUPPLEMENT TO RESPONSE. (Entered: 01/18/2010)

01/18/2010 448 SUPPLEMENTAL BRIEF re: Responding to Defendants' Response to Jan 15 Order re 444 Order on Motion for Leave to File, Order on Motion to Supplement., Order on Motion for Hearing or Conference, Order on Motion for Preliminary Injunction., Order on Motion for Summary Judgment....Motion Hearing..... 445 Supplement by Plaintiffs Tony Bouie, John McComish, Nancy McLain (Dranias, Nicholas) Modified on 1/19/2010 (TLJ). DOCKET TEXT MODIFIED FROM MEMORANDUM TO SUPPLEMENTAL BRIEF. (Entered: 01/18/2010)

01/18/2010 449 SUPPLEMENTAL DECLARATION of Marcus Osborn re 448 Memorandum, by Plaintiffs Tony Bouie, Kevin Gibbons, John McComish. (Dranias, Nicholas) Modified on 1/19/2010 (TLJ). INCORRECT EVENT SELECTED.

ENTRY MODIFIED FROM AFFIDAVIT TO SUPPLEMENTAL DECLARATION. (Entered: 01/18/2010)

01/19/2010 450 ORDER Defendants shall submit a reply addressing the issues outlined in this order and other matters raised by Plaintiffs no later than 10 a.m. on January 20, 2010. Signed by Judge Roslyn O Silver on 1/19/10. (LSP) (Entered: 01/19/2010)

01/20/2010 451 RESPONSE re 450 Order *Supplemental Briefing Regarding the Court's January 19, 2010 Order* by Intervenor Defendant Clean Elections Institute, Inc.. (Davis-Denny, Grant) (Entered: 01/20/2010)

01/20/2010 452 Reply re 450 Order, 445 Supplement by Defendants Ken Bennett, Jan Brewer, Lori S Daniels, Jeffrey L Fairman, Donald Landholm, Royann J Parker, Gary Scaramazzo. (O'Grady, Mary) (Entered: 01/20/2010)

01/20/2010 454 ORDER granting the Motions for Summary Judgment 287 and 288. Arizona Revised Statutes section 16-952 may not be applied. IT IS FURTHER ORDERED denying the Motions for Summary Judgment 285 and 293. IT IS FURTHER ORDERED denying the Motion for Leave to File Separate Response 373. IT IS FURTHER ORDERED

granting the Motions to File Supplemental Authority 393 and 399. IT IS FURTHER ORDERED denying the Motion for Status Hearing 404. IT IS FURTHER ORDERED denying the Motion for Preliminary Injunction 416 and Motion for Hearing 418. IT IS FURTHER ORDERED the Clerk shall enter judgment in favor of Plaintiffs (See Order for further details). Signed by Judge Roslyn O Silver on 1/20/10.(CLB) (Entered: 01/20/2010)

01/20/2010 455 SUPPLEMENT to the Record with New Persuasive Precedent by Plaintiffs Tony Bouie, John McComish, Nancy McLain. NOTE: Filed pursuant to 454 Order. (LSP) (Entered: 01/21/2010)

01/20/2010 456 SUPPLEMENT to the record with US Court of Appeals Decision by Plaintiffs Tony Bouie, John McComish, Nancy McLain. NOTE: Filed pursuant to 454 Order. (LSP) (Entered: 01/21/2010)

01/21/2010 457 CLERK'S JUDGMENT it is ordered and adjudged that pursuant to the Court's order filed on January 20, 2010 and upon the Court's instruction therein, judgment is entered for the Plaintiffs and against Defendants. (LSP) (Entered: 01/21/2010)

01/22/2010	459	NOTICE OF APPEAL to 9th Circuit re 457 Judgment, by Clean Elections Institute, Inc.. Filing fee received: $ 455.00, receipt number 0970-3547290. (Attachments: # 1 Exhibit A and B)(Neubauer, Elisabeth) Modified on 1/22/2010 TO INCLUDE DOCUMENT LINKAGE(KMG) (Entered: 01/22/2010)
01/22/2010	461	NOTICE OF APPEAL to 9th Circuit re 457 Judgment, by Ken Bennett, Jan Brewer, Lori S Daniels, Donald Lindholm, Royann J Parker, Gary Scaramazzo. Filing fee received: $ 455.00, receipt number 0970-3548008. (O'Grady, Mary) Modified on 1/22/2010 TO INCLUDE DOCUMENT LINKAGE (KMG). (Entered: 01/22/2010)
01/26/2010	464	Ninth Circuit Case Number 10-15165 for 461 Notice of Appeal (filed by Bennett). (REW) (Entered: 01/26/2010)
01/26/2010	465	Ninth Circuit Case Number 10-15166 for 459 Notice of Appeal (filed by Clean Elections). (REW) (Entered: 01/26/2010)
01/27/2010	467	TRANSCRIPT filed for hearing on Motion Hearing for dates of 01/15/2010 before Judge Roslyn O Silver. Court Reporter: Elaine Cropper. Re 461 Notice of Appeal, Transcript may be viewed at the court

public terminal or purchased through the Court Reporter/ Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/17/2010. Redacted Transcript Deadline set for 3/1/2010. Release of Transcript Restriction set for 4/27/2010. (BAS) (Entered: 01/28/2010)

01/29/2010 470 ORDER of 9th Circuit, this court sua sponte consolidates 10-15165 and 10-15166; the briefing schedule remains unchanged, re: 10-15165 and 10-15166 461, 459 Notices of Appeal (REW) (Entered: 01/29/2010)

02/03/2010 474 ORDER of 9th Circuit, that the stay issued by the district court on January 20, 2010 is extended pending further action by the panel assigned to hear the merits of these appeals. These consolidated appeals are expedited. The briefing schedule is reset as indicated in this order. This case shall be heard during the week of April 12-16, 2010 in San Francisco, California; appeal case number 10-15165; 10-15166, as to 461 Notice of Appeal, filed by Royann J Parker, Gary Scaramazzo, Ken Bennett, Jan Brewer, Lori S Daniels, Donald Lindholm, 459 Notice of Appeal, filed by Clean Elections Institute, Inc. (DMT) (Entered: 02/03/2010)

06/08/2010	488	ORDER of 9th Circuit as to 461 Notice of Appeal filed by Royann J Parker, Gary Scaramazzo, Ken Bennett, Jan Brewer, Lori S Daniels, Donald Lindholm, appeal case number 10-15165 re order from the Supreme court that the application to vacate the stay of the District Court's Injunction and to stay the Mandate of the US Court of Appeal is GRANTED pending the timely filing and disposition of a petition for writ of certiorari. (note: see attached pdf for complete details)(ESL) (Entered: 06/08/2010)

General Docket
United States Court of Appeals
for the Ninth Circuit

JOHN MCCOMISH; NANCY MCLAIN; TONY BOUIE,

Plaintiffs-Appellees,

ROBERT BURNS,

Plaintiff-intervenor-Appellee,

v.

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC; ARIZONA TAXPAYERS ACTION COMMITEE, agent of Taxpayers Action Committee; DEAN MARTIN; RICK MURPHY,

Plaintiff-intervenors-Appellees,

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; GARY SCARAMAZZO; ROYANN J. PARKER; JEFFREY L. FAIRMAN; LOUIS HOFFMAN; LORI S. DANIELS, in their official capacities as members of the Arizona Citizens Clean Elections Commission,

Defendants-Appellants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-intervenor.

01/22/2010	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire

due by Attorney Mary O'Grady due on 01/29/2010. Appellant Ken Bennett, Appellant Lori S. Daniels, Appellant Jeffrey L. Fairman, Appellant Louis Hoffman, Appellant Royann J. Parker and Appellant Gary Scaramazzo opening brief due 05/10/2010. Appellee Arizona Free Enterprise Club's Freedom Club PAC, Appellee Arizona Taxpayers Action Commitee, Appellee Tony Bouie, Appellee Robert Burns, Appellee Dean Martin, Appellee John McComish, Appellee Nancy McLain and Appellee Rick Murphy answering brief due 06/09/2010. Appellant's optional reply brief is due 14 days after service of the answering brief. [7205486] (GR)

01/29/2010 11 Filed order (BARRY G. SILVERMAN, RICHARD A. PAEZ, and CARLOS T. BEA) This court sua sponte consolidates appeal Nos. 10-15165 and 10-15166. All parties on a side are encouraged to join in a single brief to the greatest extent practicable. See 9th Cir. R. 28-4. The briefing schedule remains unchanged. Appellees' emergency motion to vacate the temporary appellate stay is denied. Appellants' emergency motions for a stay pending appeal will be addressed by separate order. BEA, dissenting, I would grant appellees' motion to

vacate the temporary appellate stay. [7213601] [10-15165, 10-15166] (DAF)

02/01/2010 16 Filed order (BARRY G. SILVERMAN, RICHARD A. PAEZ and CARLOS T. BEA) The stay issued by the district court on January 20, 2010 is extended pending further action by the panel assigned to hear the merits of these appeals. See California Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847, 850 (9th Cir. 2009). These consolidated appeals are expedited. The briefing schedule is reset as follows. The opening briefs and excerpts of record are due February 9, 2010; the answering brief is due February 16, 2010; and the optional reply briefs are due within 3 days after service of the last-served answering brief. All parties on a side are encouraged to join in a single brief to the greatest extent practicable. This case shall be heard during the week of April 12-16, 2010 in San Francisco, California. BEA, Circuit Judge, dissenting. (See order for full text of dissent) [7215926] [10-15165, 10-15166] – [Edited 02/02/2010 by JI] (DAF)

02/16/2010 27 Submitted (ECF) Opening brief for review. Submitted by – Clean Elections Institute, Inc. and Appellants Ken Bennett, Lori S. Daniels, Jeffrey

L. Fairman, Louis Hoffman, Royann J. Parker and Gary Scaramazzo in 10-15165, Appellant Clean Elections Institute, Inc. in 10-15166. Date of service: 02/16/2010. [7232574] [10-15165, 10-15166] (EJN)

02/16/2010 29 Received a copy of Supreme Court order regarding the application to vacate the stay presented to Justice Kennedy and by him referred to the Court is denied. (FYI panel) [7232842] [10-15165, 10-15166] (RL)

02/17/2010 30 Filed Appellants' excerpts of record in 26 volumes. Served on 02/16/2010. (FedEx to Panel) [7234234] [10-15165, 10-15166] (LA)

02/17/2010 31 Notice of Oral Argument on APRIL 12, 2010 Calendar. Please return ACKNOWLEDGMENT OF HEARING NOTICE form to: SAN FRANCISCO Office. Attention: The Notice of Docket Activity may not list your case number. Please open attached documents to view details about your case. [7234460] [10-15165, 10-15166] (AM)

02/25/2010 37 Received Supreme Court order dated 02/16/2010. The application to vacate the stay presented to Jusitce Kennedy and by him referred to the Court is denied. Denial is without prejudice to a renewed application on 6/1/2010, or when the Court of

Appeals has issued its decision on the merits of the case, whichever date is earlier. [7246884] [10-15165, 10-15166] (GV)

03/02/2010	38	Submitted (ECF) Answering brief for review. Submitted by Appellees Tony Bouie, John McComish and Nancy McLain in 10-15166. Date of service: 03/02/2010. [7248877] [10-15165, 10-15166] – [COURT UPDATE: Attached corrected version of Answering Brief. 03/02/2010 by RY] (NCD)
03/02/2010	40	Submitted (ECF) Answering brief for review. Submitted by Appellees Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Commitee, Robert Burns, Dean Martin and Rick Murphy in 10-15165. Date of service: 03/02/2010. [7250460] (10-15165, 10-15166) (WRM)
03/03/2010	42	Filed Plaintiffs-intervenors-Appellees Dean Martin, et al.'s supplemental excerpts of record on appeal in 1 volume. [7252578] [10-15165, 10-15166] (LA)
03/04/2010	44	Filed Plaintiffs-Appellees Tony Bouie, John McComish and Nancy McLain supplemental excerpts of record on appeal in 3 volumes. [7253752] [10-15165, 10-15166] (LA)

03/09/2010	46	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Center for Competitive Politics. Date of service: 03/09/2010. [7258012] [10-15165, 10-15166] (SMH)
03/09/2010	48	Submitted (ECF) Reply brief for review. Submitted by – Clean Elections Institute, Inc. and Appellants Ken Bennett, Lori S. Daniels, Jeffrey L. Fairman, Louis Hoffman, Royann J. Parker and Gary Scaramazzo in 10-15165. Date of service: 03/09/2010. [7259093] [10-15165, 10-15166] (GD)
03/11/2010	51	Filed clerk order (Deputy Clerk:SC): The unopposed motion of the Center for Competitive Politics for leave to file brief of amicus curiae in support of appellees urging affirmance is granted, and the proposed amicus brief, lodged with the motion, is ordered filed. [7262720] [10-15165, 10-15166] (SC)
03/17/2010	53	Filed (ECF) – Clean Elections Institute, Inc. and Appellants Ken Bennett, Lori S. Daniels, Jeffrey L. Fairman, Louis Hoffman, Royann J. Parker and Gary Scaramazzo in 10-15165 Motion to file substitute or corrected brief. Date of service: 03/17/2010. [7269568] [10-15165, 10-15166] (GD)

03/18/2010	54	Filed (ECF) Appellees Tony Bouie, John McComish and Nancy McLain in 10-15166 citation of supplemental authorities. Date of service: 03/18/2010. [7271299] [10-15165, 10-15166] (NCD)
03/26/2010	55	Filed (ECF) Appellees Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin and Rick Murphy in 10-15165 citation of supplemental authorities. Date of service: 03/26/2010. [7280327] [10-15165, 10-15166] (TDK)
03/26/2010	56	Filed (ECF) Appellees Arizona Free Enterprise Club's Freedom Club PAC, Arizona Taxpayers Action Committee, Robert Burns, Dean Martin and Rick Murphy in 10-15165 citation of supplemental authorities. Date of service: 03/26/2010. [7280380] [10-15165, 10-15166] (TDK)
03/31/2010	58	Filed clerk order (Deputy Clerk:SC): Appellants' Motion to File Corrected Opening and Reply Briefs is granted and the corrected briefs appended to the motion are deemed filed. The Clerk shall inform appellants whether the separate electronic and/or paper filings of said briefs will be required. [7285346] [10-15165, 10-15166] (SC)
04/02/2010	60	Submitted (ECF) Opening brief for review. Submitted by – Clean Elections Institute, Inc. and Appellants

		Ken Bennett, Lori S. Daniels, Jeffrey L. Fairman, Louis Hoffman, Royann J. Parker and Gary Scaramazzo in 10-15165. Date of service: 04/02/2010. [7288135] [10-15165, 10-15166] (EJN)
04/02/2010	61	Submitted (ECF) Reply brief for review. Submitted by – Clean Elections Institute, Inc. and Appellants Ken Bennett, Lori S. Daniels, Jeffrey L. Fairman, Louis Hoffman, Royann J. Parker and Gary Scaramazzo in 10-15165. Date of service: 04/02/2010. [7288137] [10-15165, 10-15166] (EJN)
04/12/2010	65	ARGUED AND SUBMITTED TO ANDREW J. KLEINFELD, A. WALLACE TASHIMA and SIDNEY R. THOMAS. [7297591] [10-15165, 10-15166] (RS)
05/21/2010	66	FILED OPINION (ANDREW J. KLEINFELD, A. WALLACE TASHIMA and SIDNEY R. THOMAS) REVERSED AND REMANDED. Judge: AJK Concurring. Judge: AWT Authoring. Judge:. FILED AND ENTERED JUDGMENT. [7345699] [10-15165, 10-15166] (RP)
06/01/2010	67	Received letter from the Supreme Court dated 06/01/2010 re: The application to vacate stay is denied without prejudice. [7354997] [10-15165, 10-15166] (HH)

06/01/2010	68	Received letter dated 05/26/2010 re: . . . requests that the Court de-publish current opinion and reissue it without the language discussing Governor Symington's failed criminal prosecution. [7357336] [10-15165, 10-15166] (GV)
06/04/2010	73	Received Supreme Court order dated 06/01/2010. The application to vacate the stay presented to Justice Kennedy and by him referred to the Court is denied without prejudice to a renewal application if the parties represent that they intend to file a timely petition for a writ of certiorari before this Court. The motion of Buzz Whills for Governor Campaign for leave to file a brief as amicus curiae is granted. [7366578] [10-15165, 10-15166] (GV)
06/07/2010	71	Received letter dated 06/03/2010 from Attorney John Dowd re: continue to respectfully request that the Court de-publish its May 21, 2010 opinion. [7364164] [10-15165, 10-15166] (GV)
06/08/2010	70	Received letter from the Supreme Court dated 06/08/2010 re: The application to vacate the stay of the district court's injunction and to stay the mandate of the 9th Circuit is GRANTED pending the timely filing and disposition of a petition for a writ of certiorari. [7364057] [10-15165, 10-15166] (HH)

06/10/2010	74	Filed (ECF) Appellees Tony Boue, John McComish and Nancy McLain in 10-15166 Motion to stay the mandate. Date of service: 06/10/2010. [7368477] [10-15165, 10-15166] (NCD)
06/17/2010	75	Filed order (ANDREW J. KLEINFELD, A. WALLACE TASHIMA and SIDNEY R. THOMAS) The motion of plaintiffs-appellees to stay issuance of the mandate is denied as moot, inasmuch as our mandate has already been stayed by the order of the Supreme Court, issued on June 8, 2010, in No. 09A1163. [7375354] [10-15165, 10-15166] (SC)
06/23/2010	77	Filed order and amended opinion (ANDREW J. KLEINFELD, A. WALLACE TASHIMA and SIDNEY R. THOMAS) Amending Disposition Opinion REVERSED AND REMANDED. [7381837] [10-15165, 10-15166] (PH)
08/23/2010	80	Received notice from the Supreme Court: petition for certiorari filed on 08/17/2010. Supreme Court Number 10-239. [7448136] [10-15165, 10-15166] (LC)
08/23/2010	81	Received notice from the Supreme Court: petition for certiorari filed on 08/17/2010. Supreme Court Number 10-238. [7448140] [10-15165, 10-15166] (LC)

11/30/2010	87	Received notice from the Supreme Court. Petition for certiorari GRANTED on 11/29/2010. Supreme Court Number 10-239. The petition for Cert in No. 10-238 is granted. The cases are consolidated and a total of 1 hour is alloted for oral argument. [7562224] [10-15165, 10-15166] (GV)

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

25 factors guiding state policy

Who's got the 'juice,' when it comes Capitol influence?

{}

juice: *Slang* Political power or influence; clout – *The Free Dictionary*

When they overwhelmingly approved term limits in 1992, Arizona voters transferred a slice of influence on public policy from the elected to the non-elected.

"Lobbyists have more influence, and decisions are not always based on a historical mindset," Rep. Laura Knaperek, R-17, said.

In 1998, voters passed the Clean Elections Act, a controversy-laden initiative providing candidates for state office the option of public funding for their campaigns – a change in election law that some observers say has actually tilted the Legislature more to the right.

And voters through other ballot measures, including the Voter Protection Act and separate measures requiring a two-thirds "supermajority" to raise taxes and that a funding source be designated for new spending, continue to have "juice" when it comes to state law, policy and direction under which elected officials must govern.

Voters

For its significant influence on state government – albeit many voters may consider themselves powerless to change anything – the electorate is one of the 25 most influential factors guiding state policy, as selected by Arizona Capitol Times, based on research and a series of interviews with people in and close to state government.

Term limits

Many lawmakers who supported term limits at the time now rue the day because, they say, the result has been a diminution of institutional knowledge in the halls of the Legislature and a transfer of a good deal of influence to individual lobbyists, lobbying organizations and legislative staff, notably those that have been around for decades.

In an October 2004 report, The Morrison Institute on Public Policy at Arizona State University concluded the effects of term limits reform have been positive and negative.

"When it comes to policy, observers saw term limits hindering legislative efforts to deal with long-range problems . . . and with complicated matters such as the budget," the Institute stated.

"[T]erm limits have encouraged greater competition for legislative and other seats and have given voters a greater choice among candidates. At the same time, they have generally reduced the power of legislative

leaders and generally increased the influence of lobbyists, though not all lobbyists and staff have gained equally."

The Institute concluded from a series of interviews with legislators and lobbyists that new lawmakers might rely too heavily on lobbyists for information, "and some, no doubt, have been misled as a result." Morrison added that lobbyist influence is less in the Senate because many

A challenge by Rep. David Burnell Smith, R-7, to its constitutionality is the latest argument leveled against the Clean Elections Act, which, according to recent polling, is still supported by voters who approved the public financing of state campaigns seven years ago. Like term limits, the act had unintended consequences, say its opponents.

"The primary effect of public financing has been to increase the influence of social conservatives by enabling them to compete in Republican primaries with business-backed candidates, who tend to be more moderate, writes former legislator Greg Patterson on his Republican blog, "Espresso Pundit."

"Despite the availability of public funding, special interests exerted considerable influence," he wrote. "First they served as bagmen for the $5 contributions needed to quality for public funding. Labor unions were the most conspicuous players this time around, but in future elections we can expect environmentalist, the Religious Right, or even political parties to act as

power brokers by offering rosters of $5 donors to would-be candidates.

"Clean Elections didn't push the right wing to the margin of Arizona politics. Instead it freed them from having to go hat in hand to the more moderate chamber of commerce types and their liberal trophy wives."

For the same reasons, liberal candidates have benefited from the Clean Elections Act, observers say.

In the House, 12 of 16 ultra-conservatives ran publicly funded last year, and four of eight ultraconservatives in the Senate were Clean Elections candidates.

What lawmakers said

Arizona Capitol Times in a separate e-mail survey of legislators asked whom or what they would name as the number-one influencer of public policy. Their answers included:

Tim Hogan

The National Rifle Association

Clean Elections

Marty Shultz

"Business"

Kevin DeMenna

The Constitution

Top 25, influencers of state policy

(In alphabetical order)

Arizona Chamber of Commerce and Industry

Arizona Hospital and Healthcare Association

Arizona Medical Association

* * *

U.S. District Court for the District of Arizona

[Title Omitted In Printing]

(Filed Jun. 12, 2009)

CLEAN MONEY = CLEAN ELECTIONS

GIVE AVERAGE CITIZENS MORE PRESENTATION!
REDUCE AND LIMIT CAMPAIGN SPENDING!
STOP THE ENDLESS MONEY CHASE!
STOP SPECIAL INTEREST MONEY!
LEVEL THE PLAYING FIELD!

Recent polls found **voters wanted the all of the above**. True, various legislation is in the works that would address **some** of these issues. But, if we are really serious about meaningful reform, **all of these problems can and must be included**.

Currently, only wealthy or well-connected candidates run for office because they can raise the $$$. Abe and George wouldn't have stood a chance in our last election.

The cost of winning the average US House race has more than doubled in the last 10 years. In the 1996 elections, nearly $800 million was spent on congressional campaigns.

As soon as we elect our representatives, their primary concern is **how they will raise the money** necessary for their re-election. For some, they weigh their guaranteed retirement benefits with their alternative of grubbing for $$$ and choose the easier alternative.

And for those who choose to run for re-election, all the **time they spend raising money is time they are not spending tending to the business they were hired to manage**.

As it is now, the largest donors buy the ears of our elected representatives. Special favors and tax breaks are the paybacks expected (and delivered in far too many cases) for generous campaign contributions.

By limiting the candidates who are able to raise $$$ required to run for public office, we now eliminate people whose primary interests are those that represent our values.

By **reducing the ante** to get into the game, we **open the process** to a more **diverse pool of candidates representing broader interest**.

The guy who coined the phrase "Build a better mouse trap and you get a smarter mouse" could never had envisioned the ingenious loopholes our lobbyists have created.

While some in the beltway don't think anything is broken therefore nothing needs to be fixed, others are concerned with what may have been **illegal fund raising** in our last session.

Truth is, it is what is legal that makes voters crazy. If private business attempted to operate in this manner, they would immediately be visited by our alphabet soup of federal agencies empowered to "protect the citizens."

So, what is the alternative?

Our coalition, **Arizonans For Clean Elections**, has been working on a **solution** that would **address all the current corruptive practices** on a state level.

We have concluded that the only plan that deals with all the major problems of our current system is the **clean money solution** using ***total public financing***. A 10% surtax on all civil and criminal fines currently provided under state law could finance the clean elections fund.

It would **lower the cost and length of campaign** and **block special interests** from using their campaign contributions to promote their special interests that may not be in the interests of the man on the street.

Candidates who choose to use ***total public financing*** will have to **agree to the following conditions**:

- Gather a set number of $5 contributions from voters in their district.
- Accept no private financing (including special interests, rich relatives or their own piggy bank).
- Accept spending limits.
- Shorten campaign time.

This is not about giving money to politicians, it's about the public taking power – taking control over our elections.

Your choice. Keep the existing system where the rich and special interest have the control or join us and make **CLEAN MONEY = CLEAN ELECTIONS a reality**!

Marilou Stanley, State Director
United We Stand America-Arizona 602-972-2969
Member of **Arizonans For Clean Elections Coalition**

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Clean Money, Clean Elections

Visit our website at: www.azclean.org

Limit campaign spending	➡ Clean Election candidates must agree to fixed spending limits.
Remove the influence of big money from politics	➡ Clean Election candidates may only raise a limited amount of private money.
Level the playing field for voters and candidates	➡ All Clean Election candidates who agree to spending limits and demonstrate a broad base of support received a fixed and equal amount of citizen funds for the primary and general elections.

"Issues from healthcare to the environment are not being decided on merit, but by campaign contribution. This abuse must stop."

Ida Schwartz, President
AZ League of Women Voters

"Senators and Representatives . . . weigh every decision against the question, 'How will this affect my fundraising prospects?' rather than 'How will this affect the national interest?'"

Former US senator Barry Goldwater (R-AZ)

To find out more, call:

Arizonans for Clean Elections

(602) 840-6633 or email: info@azclean.org

Paid for and authorized by
Arizonans for Clean Elections
Endorsed by: League of Women Voters
and The Sierra Club

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

"YEAH, BUT . . . "

For more information,
contact "Arizonans for Clean Elections"
3336 N. 32nd Street, Suite 106,
Phoenix, AZ 85018, (602) 840-6633
E-mail: info@azclean.org Fax: 602-2236

The Most Asked Questions About Arizona's Clean Money, Clean Elections Initiative

Q *What does the Arizona Clean Money, Clean Elections Initiative do?*

A The Initiative addresses the most serious problems that concern voters. It will

- limit campaign spending
- shorten the campaign period
- prohibit special-interest contributions to participating candidates
- eliminate the need for candidates & lawmakers to waste valuable time doing fund raising so they can instead focus full time on doing their jobs
- provide a level playing field, financially, so good people without money or connections to special interests have a fair chance to run for office

Q *How will the Initiative accomplish these goals?*

A Candidates would receive a set amount of money from the Arizona Clean Elections Fund if they voluntarily agree to reject all private special-interest contributions, to limit campaign spending, and to shorten their campaign season.

Before receiving money from the Fund, candidates would first have to demonstrate that they had public support by collecting a specific number of $5 "qualifying contributions" to be deposited into the Arizona Clean Elections Fund.

Candidates who choose to raise money by continuing to use the old system - accepting contributions from wealthy special interests - would be faced with various disincentives to raise more money than a Clean Elections opponent.

It toughens up election laws by providing more oversight of campaign finance reports and increasing fines for those who break the laws that govern our democratic elections.

Q *Is it constitutional?*

A Yes. According to the U.S. Supreme Court, public financing of election campaigns is constitutional as long as the system is voluntary. Candidates do not have to choose it; they are free to reject public financing and continue raising and spending private money, just as before.

Q *Is there really a need for Clean Money Campaign Reform in a state like Arizona?*

A Yes. Despite past reforms, special-interest money still dominates AZ elections. The majority of the

money comes from a very few wealthy individuals, corporations, and PACs. Only ¼ of 1% of the American public gives more than $200 in campaign donations to candidates. Most candidates have to get money to run their campaigns from somewhere to compete; if not from us, then where?

Here lies the problem. Who do you suppose has the ready cash for campaigns? Those very wealthy special interests who have an issue before the Legislature. The concentration of that much political power – or the ability to disproportionately effect who gets elected – by a very small number of Arizonans is inherently undemocratic. In short, money talks, especially in politics, and campaign money is coming from the same interests who will be lobbying in Phoenix when Election Day is over.

Q *Are you saying that big contributors buy lawmakers votes?*

A No candidate would say that a contribution from a special-interest lobbyist would buy a specific vote. But one does question whether special-interest groups would contribute as much as they do today, sometimes millions of dollars, if they didn't think they would benefit in some way.

If a baseball player were to give a thousand dollars to an umpire before the umpire called him "safe" or "out," we'd call it a bribe. Period. If a defense lawyer were to give a thousand dollars to each member of a jury and the judge before they reached a decision or ruled on a case, we'd want that lawyer disbarred and thrown in jail.

Yet we allow big business, the wealthy, and special-interest groups to make large contributions to the very people who will vote on legislation that effects their future business profits/ concerns. We are not saying that these contributions are buying influence or votes. However, one might question why corporate welfare blossoms in AZ. During the last few years, our politicians have doled out huge corporate welfare subsidies, predominantly to the largest and most powerful businesses. The Diamondbacks got $240 million for their stadium. Intel got about $180 million for their Chandler factory, and Sumitomo got about $165 million for their north Phoenix factory. Even Dial Corporation received $7 million when they downsized their workforce by 250 jobs and moved to Scottsdale.

Q *What makes you think candidates will choose to finance their campaigns with Clean Money?*

A There will be strong incentives for candidates. No elected official likes having to spend so much time raising money, year in and year out. No challenger looks forward to the task of trying to raise the huge sums of money being spent today. And what candidate or elected official enjoys the public perception, if not the reality, that they are compromised by their acceptance of large contributions from special interests?

Q *Won't the publicly-funded candidates still get buried by wealthy, self-financed candidates who do not need to fund raise and can spend as much money as they want - such as Steve Forbes & Ross Perot?*

A No. Under this Initiative, participating candidates will get a dollar-for-dollar match, up to a set limit. If a non-participating opponent spends more than the public financing limit, the Clean Money candidate is eligible for up to three times the set amount. In addition, under a system that offers public funding, candidates will have the "free-of-special-interest" leverage that a Clean Money campaign will provide. This benefits the image of *all* candidates that participate.

Q *How much will Clean Money Campaign Reform cost? How will it be paid for?*

A Assuming near total participation by candidates, we estimate this system would cost approximately $8 million a year from a state budget of $6 billion, or about $5 per year per tax paying family. Revenue for the Clean Money Fund will come from a combination of sources. Funding sources include a $5 check off on state income tax forms (a taxpayer that checks this box also receives a $5 reduction in the amount of tax owed), a $100 annual fee for lobbyists representing commercial or for-profit activities, a 10% surcharge on civil and criminal fines and penalties, plus taxpayers may redirect tax owed to the state to the Clean Elections Fund (up to 20% or $500 whichever is greater). All the $5 "qualifying contributions" candidates collect would also be put in the Fund. To put the cost of Clean Elections in perspective, if we simply repealed the 1997 legislature's tax cut giveaway to the 1,300 people who already make more than a million dollars a year, we would have enough money to pay for the whole proposal.

Q *What is "Arizonans for Clean Elections?"*

A Arizonans for Clean Elections is a growing, broad-based citizens' organization that is bringing energy, hope and concrete solutions to the campaign finance reform movement. It is a nonpartisan organization that is working toward putting a Clean Money, Clean Elections Initiative on the Arizona ballot in 1998. Supporters currently include the League of Women Voters of Arizona, Common Cause of Arizona, Arizona Sierra Club, National Organization for Women, National Association of Letter Carriers, United We Stand-Arizona, Arizona Citizens Action, several community leaders, and the list goes on.

Coalition members believe the way to end the corrupting relationship between special interests and politicians is to offer another way to finance campaigns. They believe if candidates choose Clean Money Campaign Reform, they can free themselves of big-money special interest & the conflict of interest that invariably follows. The coalition is offering citizens, candidates, & politicians a better way.

Citizens must get engaged, take responsibility for the problem, and solve it. Please join the team and help make democracy work in Arizona. Apathy translates Into approval of the current system.

Q *Won't the public see this as just another government spending program, or worse, a welfare program for politicians?*

A Clearly, the public distrusts politicians, and taxpayers are wary of new public expenditures. However, Clean Money Campaign Reform is very likely to save taxpayers money. Studies show that wealthy individuals and powerful corporations who supply most of the money for congressional campaigns are the recipients of billions of dollars of unnecessary tax breaks, subsidies, and regulatory exemptions. By eliminating candidates' dependence on these big-money donors, Clean Money reform will make it more likely that lawmakers will be able to say 'no' to these kinds of costly giveaways.

Q *Won't Clean Money enable "fringe candidates" to run for office with public money?*

A The public has a right to support whomever it wants, but qualifying requirements will be stiff enough to deter fringe candidates who lack public support from getting public financing. Some form of public financing already exists in 22 states and a number of municipalities. Where these systems are in place, the fears that opponents had raised about public money going to fringe candidates have not come to pass.

Q *What about the person who says, "I can't give time to help a candidate. Why shouldn't I be allowed to give money?"*

A People will still be able to give money after Clean Money reform. During the primary period, they can give a $5 "qualifying contribution" and a small amount in "seed money" to help their favorite candidate qualify for public financing. And, of course, they can still make a financial

contribution to a political party. It's important to point out that contributing money to political campaigns is not one of the principal ways most people participate in the political process. Studies show that 96% of the American people make no political contributions at all, & that most of the money in congressional races comes from less than ½ of 1% of the population.

Q *Why total public financing? Why not push for partial public financing, or a matching system like the one we have for presidential primaries.*

A This past round of presidential primaries, like the ones before it, made it abundantly clear that providing matching money does not solve the problems that the public is rightly concerned about. If candidates must solicit or use **any** special interest or private money, they have compromised their independent position.

Q *Is the passage of a Clean Money, Clean Elections Initiative a real possibility or just wishful thinking?*

A Clean Money Campaign Reform is more than a dream or wishful thinking. It's already state law in Maine, where it was approved by voters in Nov. by a 56 to 44 percent victory. A grassroots movement is gaining momentum across the U.S., and nearly two dozen other states are working on similar items.

A system similar to this has worked successfully in Tucson for years for their city elections. As a result, candidates for mayor spend less now in real dollars than they did ten years ago ~ a

statement that is not true of any other major city in the country.

Q *What's the long-term strategy/goal?*

A The national strategy is to focus on the state level first. Maine's passage of full public financing for candidates was the first step in the journey toward the end goal of passage of such legislation on the federal level. It is hoped that 3 or 4 more states will pass similar legislation in 1998 ~ the leaders of this movement are looking to Arizona to be one of those states. Once the public has demonstrated broad support for this idea across the nation, we will then demand that Congress pass a similar system for all federal elections, including Congress & the presidency. Senators Paul Wellstone, John Kerry, and John Glenn have introduced a Clean Money, Clean Elections bill in the Senate. But they need the grassroots support from across the country to make our congressional representatives listen. After all, the majority of the elected officials aren't going to upset the system that got them where they are. The system worked for them, so obviously, in their eyes, the system isn't broken, so why fix it? We need to help enlighten them and push for change . . . change that makes $ense!

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

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Difficult questions about Clean Elections:

We must be prepared to answer difficult questions on our initiative. Initiatives are susceptible to attack because generally the public knows little about their details and is more apprehensive about "the devil they don't know" than "the devil they know." Here are some responses to the most difficult questions.

Will this increase my taxes?

No, it won't. Taxpayers may direct a portion of their tax obligation to the Clean Elections Fund, but they do not have to pay more than before. In fact, it's just the opposite of a tax increase. Clean Elections will result in savings. Under our current system, special interests get tax breaks and subsidies as a result of currying favor with elected officials. Clean Elections severs the link between special interests and the politicians we elect and will help eliminate the "pork" projects that cost taxpayers millions every year.

How much will this cost?

Very little. To get big money out of state elections and to reduce campaign spending, Clean Elections will cost less than 2 percent of the current *budget surplus*. It amounts to approximately $5 for each Arizona household. Compared to the special favors and tax

breaks that wealthy individuals and special interests get in return for their contributions, Clean Elections should result in a savings of tax dollars. The annual appropriation for the fund would be capped, and any extra funds allocated would roll back to the general fund.

Where will the money come from?

We think the money should come from savings in tax breaks and subsidies that corporate special interests now get for their campaign contributions. If voters pass Clean Elections, money will come from an increased fee on lobbyists, a $5 voluntary tax check-off that features a $5 rebate, a 10% surcharge on civil and criminal fees and fines. Taxpayers may also direct up to 20% or $500 of their tax obligation to the Clean Elections Fund.

Who would administer the Clean Elections fund?

The Clean Elections Commission will administer and oversee the system. The committee would be picked from a pool of candidates nominated by the judiciary nomination board. The highest ranking official from each party would choose from the candidates sequentially.

Will this create a new, larger bureaucracy?

No. Voters need an enforcement agency that has the power and the teeth to oversee elections, and to identify and correct violations of the law when they happen – not after the election is won or lost. Today, Arizona has some of the strictest election laws in the country, but they are not enforced. Many legislators do not file complete reports and they are not on time. We should be proud that here in Arizona we will have an independent and effective agency set up to administer disclosure. We learned in 1994 that tinkering with the current system – through lower contribution limits alone – won't fix the problem. We need both spending and contribution limits. Providing free or reduced media time to candidates who agree to spending limits and to reject big money from special interests should be an important piece of federal reform. But free TV time alone won't eliminate the influence of special interest money on candidates and elected officials. Instead, it simply subsidizes the private financing of public officials. It's throwing good money – or resources – after bad. The airwaves do belong to the public, but so does our government. Let's not have one without the other.

I'm all for campaign finance reform, but not this.

Let's go back to basics: reform must get rid of special interest money; make elections more competitive; level the playing field; return to the principle of one

person, one vote; and give average people a fair shot to run and win elective office. Clean Elections is the only reform proposed in this state that accomplishes these goals. The "*I'm for reform but not this*" argument is a classic dodge that defenders of the status quo on Beacon Hill and Capitol Hill use to criticize proposals that challenge their power. It allows them to say they support something while doing nothing. Lets not fall into that trap. Clean Elections is the best alternative to get the kinds of results voters are looking for reducing the influence of big money in politics, setting reasonable spending limits, leveling the playing field, ending the money chase, and shortening campaigns for all candidates and voters alike. It is the only proposal endorsed by leading Republicans and Democrats in Arizona, major newspapers, many citizen organizations, and leading public figures. Citizens are working feverishly to collect the signatures to get on the ballot. If you want campaign finance reform now, Clean Elections is the answer.

The initiative is unnecessarily complicated.

It's actually quite straightforward. I've read it. Campaign finance reform is an inherently complicated problem and no *comprehensive* reform is simple. Arizona voters are more than smart enough to read and understand the importance of the Clean Elections Law. They certainly understand the current special interest-controlled system doesn't work for them. Clean Elections sets spending limits, contribution limits, and provides a fixed amount of money for

qualified candidates. It ends the money chase and shortens campaigns. It's as simple as that.

Isn't it ironic that you're going to raise large contributions and spend lots of money to win campaign finance reform?

It takes money to get big money out of politics. We're talking about far-reaching, but common sense reform. We have our work cut out for us. Do you think opponents of reform will think twice about doing what they always do – spending lots of money on negative distorting TV ads to defeat this? We can't tie our hands behind our back. Our democracy is too important.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Justification for Clean Elections Matching Funds

There are two main reasons for matching funds: fairness and limiting overall campaign spending.

Fairness

Currently, legislative candidates receive $28,300 in base funding ($11,320 primary, $16,980 general) For governor, $950,000 ($380,000 primary, $570,000 general)

Obviously, if an opponent raises two or three times that amount, Clean Elections candidates will be vastly outspent and will most likely defeated. Matching funds promote fairness, and elections are decided by who has the best ideas, not the most money.

Some have proposed eliminating matching funds and giving each Clean Elections candidate a higher base amount. Again this leaves CE candidates at the mercy of a good traditional fundraiser, who knows up front how much to raise in order to outspend the CE candidate.

A higher base amount is wasteful in situations where the CE candidate is running unopposed. And there may come a day when a higher initial grant would cause a shortfall in the Clean Elections Fund.

Matching funds limit spending.

A traditional candidate may think twice about raising additional funds in a race against a Clean Elections candidate. For every dollar raised above the base amount, the CE candidate is matched. There is no incentive for the traditional candidate to raise and spend more, unless that candidate intends to outspend the CE candidate by going beyond three times the initial grant.

The initial grant amount sets the tone for the race. In a race with two or more CE candidates, all must abide by the initial amount.

Without matching funds, many contests will simply become bidding wars. It's becoming more commonplace for nonparticipating state senate candidates to exceed $100,000 in spending (Jim Weiers and Barbara Leff in 2002, Jake Flake, Bill Konopnicki and Slade Mead in 2004).

With the Clean Elections matching funds system, it can be argued that millions of dollars in spending never takes place. That money should come back to consumers in lower prices and fewer favors for the special interests who otherwise would be donating.

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

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ELECTION REFORM STUDY COMMITTEE

FINAL REPORT

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ELECTION REFORM STUDY COMMITTEE
FINAL REPORT

INTRODUCTION

PURPOSE

The Election Reform Study Committee was established by Laws 1991, Chapter 241. The purpose of the study committee, as stated in the promulgating legislation, is to develop specific recommendations for both statutory and constitutional changes needed to enact positive ethics and election reforms including at least the following areas:

1. Campaign finance
2. Lobbyist registration and financial disclosure
3. Laws governing elected officials
4. Laws regarding the initiative and referendum process
5. Voter registration laws
6. Absentee voting process
7. Campaign ethics
8. Enforcement of election laws

MEMBERSHIP

The following members were appointed by the Governor:

1. Susan Bitter Smith
2. Mark Dioguardi
3. Eugene Hughes
4. Henry Kenski
5. Billy Shields

The following members were appointed by the President of the Senate:

1. Senator Alan Stephens, cochair
2. Senator Manuel "Lito" Pena
3. Senator Lester Pearce
4. Senator Ann Day
5. Bruce Burke
6. Tim Delaney

The following members were appointed by the Speaker of the House of Representatives:

1. Representative Patti Noland, cochair
2. Representative Bev Hermon
3. Representative Peter Goudinoff
4. Representative Benjamin Hanley
5. Steve Betts
6. Robert Matthews

* * *

ELECTION REFORM STUDY COMMITTEE RECOMMENDATIONS ON CAMPAIGN FINANCE

PURPOSE

The Election Reform Study Committee was directed to develop specific recommendations for statutory and constitutional changes regarding campaign finance laws. To ensure that this area was thoroughly reviewed, the Study Committee created the Subcommittee on Campaign Finance. The subcommittee was requested to examine the following general subject matters along with other issues the subcommittee deemed appropriate:

1. Fund raising activities during the legislative session
2. Disclosure of funding and reporting requirements for independent campaign committees
3. Public financing of campaigns
4. Proposition 200 limits and technical corrections

MEMBERSHIP

The following persons were appointed as subcommittee members at the first meeting of the Election Reform Study Committee:

1. Representative Peter Goudinoff, chair
2. Representative Bev Hermon
3. Bruce Burke
4. Mark Dioguardi
5. Henry Kenski
6. Robert Matthews
7. Billy Shields

MEETINGS

The Subcommittee on Campaign Finance met on July 11 and August 1, 1991. A joint subcommittee meeting of the Elections Laws, Personal Disclosure Requirements and Enforcement Subcommittee and the Campaign Finance Subcommittee was held on September 5, 1991.

ISSUES AND RECOMMENDATIONS

Below are the recommendations relating to campaign finance that were adopted by the Election Reform Study Committee. A copy of the proposed legislation is included in Appendix F.

I. Independent Campaign Committees

The Election Reform Study Committee recommends that independent campaign committees be subject to further disclosure and reporting. Specific language is included in Appendix B of this report.

II. Proposition 200 Technical Corrections

The Election Reform Study Committee recommends the technical corrections to the campaign finance statutes contained in Appendix B of this report. The draft contains the following provisions:

- Eliminates the confusion resulting from the current use of the term "campaign committee" by replacing it with the more descriptive term "political committee" to cover all organizations who must register and report. Candidate campaign committees are under the umbrella of political committees. The current use of the term "campaign committee" has caused confusion among noncandidate committees concerning their need to comply because they believe the term applies only to candidate committees.

- Provides new definitions for the following terms:

  Agent
  Anonymous contribution
  Candidate
  Candidate's campaign committee
  Clearly identified candidate
  Contribution
  Earmarked
  Election
  Expenditure
  Identification
  Independent expenditure
  In-kind contribution
  Itemized
  Personal funds
  Political committee
  Political party
  Sponsoring organization
  Statewide office
  Surplus funds

- Changes the name of the initial registration statement for political committees to "Statement of Organization" to conform to existing practice and common understanding and usage.

- Requires political committees to register within 10 days of their designation or organization. This is more realistic than the current requirement that committees register before having any financial activity since there usually are some expenditures that must be made in connection with organizing a committee.

- Requires political committees to include in their registration the name of any sponsoring organization.
- Requires political committees to have at least one bank account and to disclose where their accounts are maintained.
- Requires certain out-of-state or federal political committees to file certain campaign finance reports from other jurisdictions when registering in Arizona.
- Allows a candidate to designate only one campaign committee for each election. All filing of finance reports will be done by the candidate's committee. The current system is confusing because reporting obligations exist for both the candidate and the committee. There would no longer be a question concerning whether the candidate is required to file a Contributions and Expenditures Statement or simply a Statement of Exemption.
- Prescribes that a candidate who receives contributions and makes disbursements is an agent of his campaign committee.
- Provides that the mere designation of a candidate's committee would not invoke Arizona's resign-to-run law.
- Provides more detailed duties for the treasurer of a political committee.
- Proscribes giving false information to the campaign treasurer regarding receipts and disbursements.

- Clarifies what occurs when a candidate contributes the threshold amount of personal funds.
- Provides that a committee's qualification and certification to make contributions at the higher committee limits is valid for two years.
- Clarifies that only unemancipated minors are not entitled to have their own contribution limits.
- Provides methods for designating how contributions are to be applied to various elections.
- Sets forth how an endorsement, guarantee or repayment of a loan is treated.
- Proscribes certain methods of making contributions, including earmarked contributions.
- Provides that contributions from partnership funds be made as individual contributions.
- Provides for regular reporting of independent expenditures by political committees and for reporting of independent expenditures within 24 hours if the expenditure is made 20 days before the election.
- Provides for more than the reporting of only contributions and expenditures by requiring that all receipts and disbursements be included. The current statements of contributions and expenditures are replaced with campaign finance statements, which more accurately describe the content.
- Requires political committees to file periodic campaign finance reports, regardless of whether

any receipts or disbursements occur, according to a new schedule:

  - In an election year, reports would be filed before each election, after any non-primary election and quarterly.

  - In a non-election year, a report for the period ending June 30 and a report for the period ending December 31 would be filed.

- Exempts judges who are candidates for retention from filing a campaign finance report if the judge has no campaign committee and does not receive contributions or make expenditures.

- Provides for the formal ending of a political committee by the filing of a termination statement, and prescribes the conditions that must be met for termination.

- Details more accurately the information to be required on each campaign finance report. This also reflects the intent to capture all receipts and disbursements and not just traditional contributions and expenditures.

- Amends the section pertaining to disposal of surplus campaign funds by eliminating duplications and unnecessary distinctions that currently exist while retaining the recently enacted prohibition against converting surplus funds to a candidate's personal use.

- Clarifies when a required report or statement is deemed to be filed.

- Requires that a political committee that makes independent expenditures aggregating $500 made

less than 20 days before an election must report the expenditure within 24 hours.

- Allows campaign committees to incorporate only for liability purposes without prohibiting them from influencing candidate elections.

Additional Items Discussed by the Election Reform Study Committee But Not Adopted:

I. Voluntary Expenditure Limitations

The Election Reform Study Committee considered the issue of voluntary campaign expenditure limitations. A motion to recommend the adoption of voluntary campaign expenditure limits was withdrawn.

II. Public Financing

The Election Reform Study Committee discussed the issue of public financing and recommended that it not be pursued.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Arizona Daily Star

February 8, 1991

Videotapes show payoffs

Ariz. legislators, lobbyists appear at sting meetings

Mary K. Reinhart; The Arizona Daily Star

Arizona legislators were immortalized on videotape taking stacks of money from a man they knew as J. Anthony Vincent in exchange for their votes.

Phoenix police released the tapes and transcripts yesterday of meetings between the undercover police agent and lawmakers and lobbyists as they mapped out strategies to legalize gambling and get rich from the 500-room casinos that would result.

The investigation by the department's organized crime bureau and the Maricopa County Attorney's Office produced 22,000 pages of transcripts, 600 audio cassettes and 300 videotapes.

Authorities used former FBI informant Joseph Stedino to set up an elaborate sting operation in which Stedino posed as Vincent, a fast-talking, free-spending Reno, Nev., gaming consultant who wanted to buy votes to set up gambling operations in Arizona.

Lawmakers and lobbyists were taped during meetings with Vincent at his plush Phoenix office and apartment, the Ritz-Carlton Hotel, and in cars and restaurants. Telephone conversations also were taped.

On Sept. 18, Sen. Carolyn Walker, D-Phoenix, met Vincent at his office and accepted $15,000 in cash – 15 $100 bills – telling Vincent: "We all have our prices."

She tells Vincent she will support casino-gambling legislation, as well as bills to allow private firms to construct prisons and the election of judges.

The color videotapes show a relaxed Walker wearing a lime-green shirt and Indian-print skirt sitting in an armchair across from Vincent, who is seated behind a desk. She sips Diet Coke, laughs and talks about using the money to finish paying her daughter's college tuition.

A month later, Walker met Vincent and asked for a loan of $500,000 to $750,000 to launch a recording company. Vincent told Walker he would let his friends in the recording industry know that Walker was "with him."

"Well, that's one of the reasons why I came to you 'cause I figured that I would have some of your protection," Walker said, according to court records. "I'm on board with ya, let me tell ya."

Another video, made Sept. 18, shows Sen. Jesus "Chuy" Higuera, D-Tucson, sitting across the desk

from Vincent in Vincent's office, eating sandwiches and discussing Higuera's running the shrimp concessions at casinos that Vincent would open once casino gambling was legalized.

"I'd like to own a business that supplies your shrimp. That's what I'd like to do," Higuera said on the videotape.

Higuera agreed to support casino-gambling legislation. Vincent gave Higuera $1,540 in money orders and $1,000 cash.

A video made at Vincent's office April 30 shows Rep. Don Kenney, R-Phoenix, lobbyist Ron Tapp and Vincent discussing the legislation. Kenney agreed to "quarterback" the operation, and was handed a stack of bills that an indictment alleges was $55,000. He put the money into a gym bag that he brought to the meeting, according to court records.

Other new developments in what could be the biggest political scandal in Arizona history:

-- The indictment of Gary Bartlett, a Phoenix private investigator hired by Vincent to drum up support among legislators for the gambling legislation.

Bartlett was among 16 people indicted by a Maricopa County grand jury Tuesday on charges that include bribery and money laundering. But was not served with the indictment until yesterday.

The charges against Bartlett, who introduced Vincent to Kenney, include bribery, money laundering and

leading an organized crime. The Class 2 and 3 felonies carry penalties of 10 to 14 years in prison.

– The Senate hired Phoenix attorney Ed Hendricks as special counsel to investigate the allegations against three Democratic members – Higuera, Majority Whip Walker and Majority Leader Alan Stephens of Phoenix.

Hendricks is a partner with the firm of Meyer, Hendricks, Victor, Osborn and Maledon, joining the firm in 1971. He earned his law degree from the University of Arizona in 1969.

Stephens and Walker have been placed on "inactive" status from their roles in the Senate leadership, and Higuera voluntarily stepped aside as chairman of the Government and Public Safety Committee.

Higuera and Walker are among seven legislators charged in a 103-count indictment alleging they took money in exchange for their support of casino-gambling legislation. A total of 16 people have been indicted in the case, but one person has yet to be served.

Stephens, Higuera, Walker and those charged in the criminal indictment are named in a civil racketeering suit seeking about $2.5 million in damages and to cover the cost of the 16-month-long investigation.

Also charged in the indictment and racketeering suit are Kenney, chairman of the Judiciary Committee and House parliamentarian; Rep. Jim Meredith, R-Phoenix, Rules Committee chairman and former

House majority leader; Rep. Jim Hartdegen, R-Casa Grande, chairman of the Natural Resources and Agriculture Committee; and Democratic Reps. Bobby Raymond and Sue Laybe, both of Phoenix.

Lobbyists Ernie Hoffman of Tucson, Rich Scheffel and David Horwitz also were indicted. Scheffel has entered a plea agreement to one count of conspiracy to commit bribery and is cooperating with authorities in the ongoing investigation.

Also charged were George Stragalas, an unsuccessful Democratic candidate for state treasurer last year; Shiree Foster, a representative with the Arizona Chamber of Commerce; David Manley, a Maricopa County Democratic Party official and also an aide to state schools Superintendent C. Diane Bishop; and Tapp.

In announcing the hiring of Hendricks as special counsel, Senate President Peter Rios, D-Hayden, said the investigation is intended to "get to the bottom of these circumstances," but should not be viewed "as reflecting upon the guilt or innocence of any individual."

Unlike House Speaker Jane Dee Hull, R-Phoenix, Rios has not asked his members to resign.

"A fair and impartial review by the (legislative) Ethics Committee is essential to determine if any illegal or unethical behavior has, in fact, occurred which impairs the ability of individual legislators, and the Senate as a whole, to carry out their official

duties in an honest and ethical manner so that the integrity of the legislative process can be maintained," Rios said.

Sen. Jaime Gutierrez, D-Tucson, chairman of the five-member ethics panel, helped choose Hendricks as the special counsel. Hendricks fee is $200 an hour, not including the cost of paralegals and other staff.

"His law firm is not known as a Democratic or Republican law firm," Gutierrez said. "He is knowledgeable, he has credibility, he has the temperament and demeanor for the job."

Gutierrez estimated that it would take Hendricks several weeks to complete his investigation and report back to the Senate.

Meanwhile, the House will decide Monday how to proceed with its investigation. The House also plans to hire a special counsel from a private firm.

U.S. District Court of the District of Arizona

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February 9, 1991

Section: MN – Main News

Indictment of Lawmakers Another Blow to Arizona Ethics: Sting follows Mecham, King controversies. Case is one of series involving legislators around nation.
L FELDMANTIMES STAFF WRITER
TIMES STAFF WRITER

PHOENIX Nine minutes before stuffing what police say was $55,000 in cash into a gym bag, Arizona State Rep. Don Kenney sounded a bit nervous.

"You sure there isn't a camera?" Kenney asked J. Anthony Vincent, purportedly a deep-pocketed Las Vegas lobbyist seeking legalized casino gambling in Arizona. " . . . I remember those videotapes of the Abscam trial."

Kenney, chairman of the House Judiciary Committee, had greater intuition than he imagined.

Vincent was actually an ex-con named Joseph C. Stedino who was serving as a sting man for the Phoenix Police Department. And, despite Vincent's repeated denials, a hidden camera was indeed recording the action as Vincent counted and doled out the

cash during a nearly two-hour meeting in his posh northeast Phoenix office last April.

In all, more than 200 video and 600 audiotapes of a yearlong series of sordid sessions are at the heart of a 102-count **bribery** and money-laundering indictment handed up this week against Kenney, six other **Arizona** state **legislators** and 10 lobbyists and political activists.

The Maricopa County grand jury action accuses the lawmakers of agreeing – often in B movie-style language – to support casino gambling legislation in return for cash bribes. An accompanying civil racketeering suit seeks more than $2.5 million in damages from 18 defendants, including two additional state legislators.

The sting, dubbed Operation Desert Shame by the Phoenix media, is but the latest in a series of eye-catching episodes that have brought unwanted national attention to Arizona.

In 1988, it was the impeachment and removal from office of conservative Republican Gov. Evan Mecham. Last fall, it was voters' rejection in referendums of measures establishing a paid state holiday honoring Dr. Martin Luther King Jr.

Now, nearly one-tenth of the entire Arizona Legislature faces criminal or civil charges.

"We've had a lot of bad luck here in the state of Arizona – there's absolutely no question," said County Atty. Richard M. Romley, who is prosecuting the

current case. "But you can't turn your back on this. . . . Public corruption is one of the most serious of all accusations."

And the emerging scandal is only the latest in a nationwide string of stings in which state legislators have been implicated in wrongdoing:

– In South Carolina, nine state lawmakers were indicted late last year after they accepted cash from a federal undercover agent to support a bill to allow parimutuel betting on horse and dog races.

– In California, former Sens. Paul Carpenter and Joseph P. Montoya were sentenced to federal prison last year for crimes that included extorting money to push legislation benefiting companies – bogus companies set up by the FBI.

– Since 1985, 10 New York state legislators, including Assembly Speaker Mel Miller, have been charged with criminal conduct – more than have lost their seats in general elections, according to one watchdog group.

– And, in Texas, House Speaker Gib Lewis was indicted last December on a charge of failing to report a gift from a law firm that holds contracts to collect delinquent taxes.

"Over the last few years, the public has been building up a negative perception of politicians in general, and this reinforces it," said Tommy Neal, a policy associate for the Denver-based National Conference of State Legislatures.

Some experts on legal ethics, such as UCLA School of Law Prof. Daniel Lowenstein, say the scandals may stem from staggering increases in the cost of running for state office.

"Legislative candidates now feel the same pressure to raise campaign funds as has been true for people in Congress," Lowenstein said.

Thomas Puccio, who prosecuted the seminal Abscam case – which brought down a U.S. senator, six congressmen and the mayor of Camden, N. J., a decade ago – takes a different tack.

"Corruption in state and local and federal government is something that's always with us," said Puccio, now a private New York attorney. "(But) the state may not have been policed as much (in the past).

"The federal government has now passed on a lot of its (investigative) techniques to state and local governments, and they employ these procedures.

"It's sort of become a little like McDonald's – a franchise. It's done all over the place now, and it's a very successful technique."

In the Abscam probe, lawmakers, including New Jersey Sen. Harrison A. Williams Jr., were taken in by hustler Mel Weinberg, who posed for the FBI as, of all things, an Arab businessman.

The Arizona case has brought to the forefront the glib, good-looking Stedino, a onetime Las Vegas TV personality who was sentenced to a year in federal

prison in 1984 after pleading guilty to a scam involving $150,000 in stolen traveler's checks.

Initially, Stedino, who had been a police informant in Nevada, was hired by the Phoenix police to assist in an undercover investigation of gambling scams in Phoenix-area bars. But Stedino quickly learned, authorities say, that state legislators would be willing to support legalized casino gambling in Arizona in exchange for cash.

"At first, I was very skeptical, but the evidence kept accumulating," 10-year Phoenix Police Chief Ruben Ortega said. "We had come upon a system of corruptiveness that we felt could not be ignored."

In meetings with lawmakers in a third-floor office of a glass-and-granite office building kitty-corner from the Ritz-Carlton Phoenix, Stedino portrayed himself as Vincent, a Vegas hustler with mob ties, who planned to open a casino in Arizona if gambling were legalized.

During the April meeting with Kenney, court documents state, Vincent agreed to give the lawmaker $55,000 in cash in exchange for his vote and sponsorship of casino gambling legislation. "I understand that exactly," Kenney is quoted as responding.

In the following months, operatives, including Kenney, who was labeled the "quarterback" of the scheme, steered additional lawmakers to Vincent.

Of the legislators indicted, three, including Kenney, are Republicans. The other four, including state Sen. Carolyn Walker, are Democrats.

Majority Whip Walker, who cast what turned out to be the deciding vote on Mecham's impeachment almost three years ago, met with Vincent on Sept. 18. Court documents state that she accepted $15,000 after telling the sting man, "We all have our prices."

In another meeting that month, state Sen. Jesus (Chuy) Higuera, chairman of the Senate Government Committee, asked Vincent for the shrimp and fax machine concessions at the casino he would eventually open.

The next month, in another session recorded on video, state Rep. Bobby Raymond told Vincent that there was "not an issue in the world that he gives (an expletive) about," according to the indictment. Later, Raymond informed the sting man that his favorite line was: "What's in it for me?"

The scope of the indictments and the graphic content of the fuzzy color videotapes have left Arizona reeling.

Leaders of the state Senate and House have called for the creation of ethics committees. And most of the legislators named in the criminal and civil actions have stepped down, at least temporarily, from their leadership posts.

Last Thursday night, the local CBS-TV affiliate broadcast more than 90 minutes of the videotapes, showing

meetings between Vincent and legislators, including Kenney, Walker and Raymond.

And even Mecham, the pariah of Arizona politics, is back in the news, telling reporters that the indictments are "a small tip of a small little piece of ice in a great big pond of corruption."

Arraignments are scheduled for Valentine's Day, but already one defendant, lobbyist Richard Scheffel, has pleaded guilty to bribery conspiracy and agreed to cooperate with prosecutors.

County Atty. Romley said that the investigation is continuing, and insiders say the scandal could eventually taint several additional leading Arizona state lawmakers.

The indictments and the videotapes have stirred negative reaction from several Arizona law professors and officers of the American Civil Liberties Union.

"The job of the police should be to discourage crime, not create it," said Louis Rhodes, executive director of Arizona's ACLU chapter, at a Phoenix press conference.

However, Ortega strongly defends the investigation, noting that it did not start out as an effort to target lawmakers. Moreover, Ortega emphasized, Vincent was carefully monitored to avoid accusations of entrapment: He made no initial contacts of his own with the legislators and made no initial monetary offers to them.

"All comments or requests or demands for monies or goods would initially come from the suspect himself or herself," Ortega said. "And that was exactly what happened with every one of them."

Both Ortega and Romley say they had many sleepless nights during the investigation, worrying, in particular, about whether cash given to the legislators might help them win elections they would otherwise have lost.

"There is a possibility (that happened), absolutely," Romley acknowledged in an interview with The Times.

"That is one of the difficult issues I had to address. I knew that, and, you know, it's kind of a Catch-22 situation. If you don't give them the money, even though all indications are they want to take a bribe, well, they could still win and be in office for 10 years. Or, if you give them the bribe, you go forward and you aggressively pursue it and you convict them and they're barred from office for life."

"There's one bottom line," Romley added. "I mean we can play all the games we want. But I'm going to show the tapes (in court). And the tapes will speak for themselves.

"They don't lie."

U.S. District Court for the District of Arizona

(Filed Jun. 15, 2009)

[Title Omitted In Printing]

Arizona Daily Star

February 10, 1991

Excerpts from indictment tell tale of political deals

The Arizona Daily Star culled excerpts from a Feb. 5 Maricopa County Grand Jury indictment of state legislators, lobbyists and their associates.

The indictment charges seven legislators and nine other Arizonans with bribery, money laundering, campaign finance law violations and other offenses.

On Jan. 19, 1990, former Democratic Party executive director George Stragalas III was introduced to police undercover agent Joseph Stedino, known during the sting operation as "J. Anthony Vincent."

Vincent told Stragalas, who last fall lost a bid for state treasurer to former Republican legislator Tony West, that he wanted to seek legislators' support for legalized gambling. Stragalas told Vincent that legislators were "whores."

In eight payments between March 26 and Oct. 30, Stragalas would accept $27,450 from Vincent.

On Feb. 5, 1990, Vincent had a telephone conversation with Gary L. Bartlett, a Phoenix private

investigator Vincent had hired, in which Bartlett described Rep. Don Kenney, R-Phoenix, as a "crook."

Bartlett was a securities salesman in 1978 when he ran as a Democrat for state treasurer, losing badly to Republican Clark Dierks.

During that campaign, Bartlett lost the support of then-Gov. Bruce Babbitt and other Democratic Party stalwarts when his record of securities-sales irregularities in other states came to light.

On Valentine's Day last year, Bartlett told Vincent that he knew a 19-year-old prostitute he believed could influence Kenney.

A week later, Bartlett told Vincent he planned to get to legislators with "cash, booze" and sex.

On April 16, Ronald G. Tapp of Phoenix, then-president of the Arizona Bail Bonds Association, who had been enlisted to help Vincent, told Vincent that Kenney had ambitions to be House speaker.

To attain that post Kenney would need money to contribute to other House Republicans on a loan basis, but with no repayment, Tapp said.

On April 25, Tapp told Vincent: "Kenney's budget will be 45 grand." He said the money would make Kenney chairman of the House Judiciary Committee, through which a bill to legalize gambling would go.

On April 30, in Vincent's office, Kenney laid out what had become a $55,000 plan to Vincent.

Kenney said he would need the support of Democrats – among them then-Senate Minority Leader Alan Stephens of Phoenix (who was not indicted, but who faces a civil racketeering lawsuit), and Rep. Bobby Raymond, also of Phoenix – as well as Republicans.

Kenney agreed to "quarterback" the effort. He put $55,000 in cash from Vincent into a gym bag and left.

On July 2, Tapp told Vincent that Rep. Jim Hartdegen, R-Casa Grande, had agreed to sponsor a bill to legalize gambling, but had said he could not be bought. Kenney said Hartdegen accepted $220, the legal limit, from Vincent.

A week later, Kenney told Vincent that House Speaker Jane Dee Hull, R-Phoenix, had promised him the Judiciary Committee chairmanship in return for his vote on the 1990 tax increase and budget package.

Rep. Sue Laybe, D-Phoenix, met with Vincent in his office on Aug. 2 and told him she needed $10,000, and that what the two discussed would stay with them "to the grave."

Later that day, Vincent paid Arizona Chamber of Commerce representative Shiree Foster $200 to become a chamber member.

On Aug. 7, Vincent handed $10,000 in cash to Laybe, and she counted it in his office. Laybe agreed to co-sponsor the bill to legalize gambling.

Foster went to Vincent's office the next day and told him she knew several legislators, including Sen. Jesus "Chuy" Higuera, D-Tucson.

"All I can do is charm them and, you know, get them in here, and then you can take care of the rest," Foster told Vincent.

A busy Vincent talked on Aug. 9 with David Horwitz, lobbyist for the American Federation of State, County and Municipal Employees union, whom he had met on July 25. Horwitz told Vincent that he had ways to shuffle money.

Higuera met with Vincent on Aug. 17 and told the gambling proponent he could work with him on many fronts. Higuera said he wanted the shrimp concession in the casinos Vincent would build.

Three days later, Stephens went to Vincent's office and advised Vincent not to make the legalized gambling plan public before the November election. Stephens asked for $440 in campaign contributions from Vincent and Vincent's wife.

Lobbyist Ernest Hoffman met with Vincent on Aug. 23. Hoffman advised Vincent to commission an economic study and a research poll on legalized gambling. He said a poll could be disguised to influence voters.

Hoffman said he used his daughters to distribute campaign money to candidates in excess of legal limits.

He told Vincent: "It's a dirty shame to have Proposition 200 (which set the campaign-finance limits); it's a whore's dream."

Sen. Carolyn Walker, D-Phoenix, met with Vincent on Sept. 6 and told him she needed $5,000 for her campaign. They discussed Walker's getting the "gift shop" business at Vincent's planned casinos on the "back end."

Walker said, "I like the good life, and I'm trying to position myself (so) that I can live the good life and have more money." She picked up a packet of money and put it in her purse.

On Sept. 13, Vincent met with Tapp, Hoffman and then-Rep. Bill English, R-Sierra Vista, at a Phoenix hotel. English said he needed "$15,000 to $20,000 additional" for what would prove to be a losing campaign.

Hoffman said he often floated loans to English and bought materials for his campaign. English said he and Hoffman "obviously have a very serendipity type of relationship." Hoffman put $18,000 from Vincent into his briefcase.

On Sept. 14, Laybe asked for another $10,000, and Vincent handed her that sum in cash.

Vincent and Higuera met again the next day. "Do you want the shrimp?" Vincent asked. "Sure I do," Higuera replied. They also discussed Higuera's having a fax machine business in Vincent's casinos.

Vincent gave Higuera $1,540 in $220 money orders and $1,000 in cash. Before leaving Vincent's office, Higuera said: "Keep me in mind on . . . the fax."

Walker met with Vincent in his office on Sept. 18 and told him she at least wanted to "die rich." Vincent said she would get the gift shop business in his casinos, and she said: "We all have our prices."

Vincent asked Walker to support bills calling for election of judges and allowing private companies to operate prisons. She asked for and took $15,000 in cash from Vincent. On Oct. 3, Vincent gave Walker an additional $1,200.

Kenney told Vincent in an Oct. 3 conversation that 20 percent or 30 percent of the Legislature's members probably would come to Vincent and "just take a bag out."

House Majority Leader Jim Meredith, R-Phoenix, met with Vincent the next day, and Vincent gave him $2,200 in cash for tickets to a dinner for Fife Symington, the Republican candidate for governor.

Meredith produced a list of Republican House members he needed to support his leadership position and arrived at $7,040 to contribute to their campaigns. Vincent gave Meredith $7,100 more in cash.

Rep. Bobby Raymond, D-Phoenix, called Vincent on Oct. 6 and said he wanted to "talk business" that day. Raymond said he and English "did a lot of deals together."

Raymond went to Vincent's office later and told Vincent there was "not an issue in the world that I give a shit about. I do deals. I like the deals of the Legislature." Raymond asked for and took $10,000 in cash.

At an Oct. 10 meeting, Raymond told Vincent that Arizona legislators "are a bunch of unsophisticated whores."

Vincent met with lobbyist Rich Scheffel on Oct. 11. Scheffel said, "You can give funds, but I think you have to be discreet. You have to have a plan."

Raymond told Vincent the next day that he and Scheffel had worked "deals" together, that Sheffel "can deliver."

He added: "Rich Scheffel and I have done enough business together to land both of us in jail for a long, long time."

On Oct. 24, Vincent paid Scheffel $22,000 in cash for Scheffel's services as a lobbyist.

Vincent met with Stephens at a Phoenix restaurant on Oct. 30 and gave Stephens $4,180 in postal money orders in an envelope.

On Nov. 13 at Vincent's apartment, Vincent paid Hoffman $24,600 in cash for an economic survey and Scheffel $7,500 in cash for a video presentation.

Laybe went to Vincent's office on Nov. 15 and took $3,000 in cash from him for what she said was a campaign deficit problem.

On Nov. 18, Hartdegen told Vincent over the telephone that he appreciated the $660 that Scheffel had told him was from Vincent. Vincent confirmed that he had given Hartdegen the money through Scheffel.

Walker asked for and accepted $4,000 in cash from Vincent on Nov. 19.

On Dec. 20, Higuera returned to Vincent and asked him to help him raise $1,500 to buy some "raffle tickets." Vincent gave Higuera $1,500.

After several meetings between Vincent and new Maricopa County Democratic Party Chairman David Manley, Manley suggested on Jan. 3, 1991, that Vincent put him on a retainer of $1,000 a month.

Vincent paid Manley $3,000 as an advance for a three-month retainer.

Manley had told Vincent that Manley could launder money through the party to candidates of Vincent's choice, and could find "friendly" candidates to oppose legislators who were opposed to Vincent's project.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

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February 11, 1991

Section: A

Civics 101 on Tape in Arizona, Or, 'We All Have Our Prices'

SETH **MYDANS**, Special to The New York Times

PHOENIX, Feb. 9 "Are you sure there are no hidden cameras up there?" joked State Representative Don Kenney moments before accepting what the police say was a $55,000 bribe and zipping it into a gym bag.

"Wave to the cameras," replied a smooth-talking, chain-smoking man who called himself J. Anthony Vincent and said he was a casino operator out to trade money for votes to legalize gambling in Arizona.

There was indeed a hidden camera, and "Mr. Vincent" was in fact a convicted con man, working for the police in a 16-month operation that resulted in the indictments over the past few days of seven state legislators and 11 other people. More indictments are expected.

Lobbyist Pleads Guilty

Nervous jokes about hidden cameras are a theme running through nearly 500 hours of police videotape, portions of which have been broadcast nightly on television. The public display of legislators and lobbyists accepting wads of money comes three years after the impeachment of Gov. Evan Mecham on corruption charges and while an ethics investigation of both of Arizona's United States Senators is still going on.

One of those indicted in the operation carried out by the Phoenix Police Department and the Maricopa County Attorney's Office, a lobbyist named Rich Schefel, pleaded guilty to conspiring to bribe legislators and has been cooperating with investigators. Some of those indicted have declared that they broke no laws in accepting money and have complained about what they see as entrapment, while others have declined public comment.

The widening scandal, in which one legislator after another can be seen on video-tape exchanging pleasantries while pocketing what the police say was thousands of dollars, has paralyzed the State Legislature and raised calls for political reforms, including changes in campaign finance laws and an increase in the salary of state legislators, now just $15,000 a year. The Democratic-controlled Senate has 30 members and the Republican-controlled House 60.

The legislators who have been implicated have relinquished or been asked to give up any leadership posts they hold. Political analysts say internal ethics

proceedings could result in the removal from the Legislature of more members than are actually indicted.

The scandal has raised a host of issues, including the concern that the more than $380,000 used by the police as bribes went to support the election campaigns of some legislators and possibly affected the outcome of the races.

Cynicism on Display

But the most damaging effect could be a lasting disillusionment that has grown out of the nightly broadcasts of the videotapes. The taped conversations are filled with easy talk about money laundering, blackmail and bribery and a cynicism about public life that seems to accept shady back-room deals as a way of doing business.

Most of the legislators are shown in the police transcripts of the tapes to have paid several visits and received repeated payments from the con man, whose real name is Joseph C. Stedino. "What do you need?" he sometimes asked them, or, "What can I do for you?"

One after another, the transcripts show them confiding their political fears and private ambitions.

"I like the good life, and I'm trying to position myself that I can live the good life and have more money," Senator Carolyn Walker, a Phoenix Democrat, said on

one tape, adding that it was her ambition to "die rich."

"We all have our prices," she said before leaning across a table to accept what the police say was some of the $25,880 she received from "Mr. Vincent."

'What's in it for Me?'

Another legislator, State Representative Bobby Raymond, also a Democrat, is described in the transcripts as saying, "I don't give a (expletive) about issues," and adding, "There is not an issue in this world that I give a (expletive) about."

He adds, "My favorite line is, 'What's in it for me?'"

The indictment charges that Mr. Raymond received a total of $12,105. When he learns of a larger payment to another legislator, he is described as saying, "I sold way too cheap."

In addition to payoffs, one legislator asked to be assured of getting the shrimp concessions at any casinos run by "Mr. Vincent." Another sought the gift shop concessions as well as help in setting up a recording company.

Mr. Kenney, a Republican who until a few days ago was chairman of the House Judiciary Committee, appeared to be a central figure, naming other legislators and suggesting ways to "fish them in." For those who could not be bribed, he proposed using "a sledgehammer." He is shown providing details of what he

says are the sexual and financial foibles of his colleagues.

'Check Her Sex Life'

The transcripts quote him as saying of one of them: "I'd check her sex life, check her finances. 'Cause she's just a real loudmouth that you just need to shut up."

In addition to the payments from "Mr. Vincent," the videotapes show Mr. Kenney receiving cash from a lobbyist named Ronald Tapp, who was indicted Friday on bribery charges stemming from his actions in helping "Mr. Vincent."

Other public figures have expressed disgust with the picture of political life displayed on the videotapes. They said it compounded a perception of corruption in the state that includes the 1988 impeachment of Governor Mecham for concealing a $350,000 campaign loan and lying about it, and the fact that both Arizona Senators, Dennis DeConcini, a Democrat, and John McCain, a Republican, are under investigation by the Senate Ethics Committee in connection with Charles H. Keating Jr. and his Lincoln Savings and Loan Association.

"It is a story of sickening proportions," said Alfredo Gutierrez, a former Democratic State Senator who served as both majority and minority leader. "We are all in shock. In terms of confidence, it will take years to rebuild."

Babbitt Is Dismayed

Speaking to a convention of civic planners, a former Governor, Bruce Babbitt, said: "Sometimes, around public servants and political officials, you get the feeling that you almost want to deny that you're in public service. It's looked upon as such a low-down, inadequate occupation for misfits and for people who can't go out and be real estate developers."

The transcripts show that some targets of the investigation indignantly rejected bribes. "Nobody can commit my vote," says Senator John Dougherty, a Democrat. The police said that in the course of their operation three people reported to them the apparent attempts at bribery.

Representative Stan Barnes, Republican of Mesa, said he spurned advances by "Mr. Vincent" because, with his open shirt and heavy medallion and with his overly smooth manner, "he was really a laughable character."

"With his appearance straight out of central casting for a Mafia movie, I'm surprised anyone took him seriously," Mr. Barnes said.

And yet they did, with Senator Walker, for one, asking him for business advice and saying: "I don't know why I trust you. I just trust you."

A Shadowy History

Mr. Stedino, who was host of his own late-night television show in Las Vegas in the 1970's, pleaded guilty in 1984 in a scam involving $150,000 in stolen travelers' checks and was sentenced to one year and a day in Federal prison.

His recent history is hazy. There are unconfirmed reports that he has participated in at least one other sting operation, in Nevada.

The Arizona operation has recent models in California and South Carolina, where undercover agents posed as lobbyists pushing for legislation involving, respectively, a fictitious shrimp-processing plant and legalized racetrack betting.

In California, State Senator Joseph Montoya and former state Sen. Paul Carpenter were convicted last year of accepting bribes. Both convictions are under appeal. In a current case in South Carolina, 11 state legislators were indicted last year for accepting bribes. Six have pleaded guilty.

Were Campaigns Affected?

One notable aspect of the Arizona sting is that much of the money distributed to lawmakers was in the form of contributions to campaigns last fall and could have changed their outcome.

For example, Judith Connell, a candidate in West Phoenix, narrowly lost to the incumbent Mr. Raymond, whose gift from "Mr. Vincent" was almost double the $6,800 she raised for her campaign.

Louis Rhodes, executive director of the Arizona chapter of the American Civil Liberties Union, said the outcome of several races could have been affected by the tribes. He accused the police of violating state campaign spending laws.

The A.C.L.U. also questioned the tactics of the investigation, in which it said the police appeared to have created a crime that would not have existed otherwise.

But most analysts here said the evils displayed on the videotapes far overshadowed those of any entrapment that was used to elicit them.

Mr. Mecham himself said he took this view. "I realize that the A.C.L.U. and these bleeding hearts are worrying about the fact that these people were invited to break the law," the former Governor told The Phoenix Gazette. "But you know that's a little bit ludicrous. If they didn't break the law, they wouldn't be in trouble, would they?"

Photo: A 16-month police operation resulted in the indictments of seven state legislators in Arizona, including Representative Don Kenney. In a video released by the Phoenix police, Mr. Kenney is shown at left, allegedly accepting a bribe from Ronald Tapp, who was indicted on bribery charges. (Associated Press) (pg. B9)

U.S. District Court for the District of Arizona

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USA Today (USA)
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February 13, 1991

Section: NEWS

NEW TARNISH ON ARIZONA'S IMAGE
BRIBE CASE HAS STATE 'IN SHOCK'
LAWMAKERS ON VIDEOTAPE

Sally Ann Stewart

PHOENIX Disc jockeys are calling it Operation Desert Shame. Phoenix police have dubbed it **AzScam**. Whatever the name, the **bribery** indictments against seven state senators and representatives are the hottest scandal to rock **Arizona** since its governor was impeached.

Almost 10% of the state's **legislators** have been indicted on criminal or civil **bribery** or racketeering charges. Altogether, 19 current and former legislators and lobbyists can be viewed – on more than 200 videotapes – stuffing money into envelopes and gym bags. The charge: They took more than $370,000 after pledging to vote for legalized gambling.

And since last week, when Phoenix police announced results of their 18-month sting operation, rumors of more indictments have flown through the capital. Even Police Chief Ruben Ortega has said he

stopped the probe because he thought it eventually would encompass most of the state's leadership.

"They got their hands caught in the cookie jar," says retired Phoenix TV store owner Donald Emery, while he toured the Capitol this week. "Now they should be gentlemen and ladies and step down."

The scandal even threatens the gubernatorial campaign. Prosecutors say both candidates – Republican Fife Symington and Democrat Terry Goddard – got campaign contributions from the sting but had no reason to be suspicious. They returned the money when the scandal broke; neither has been charged. The election is Feb. 26.

So far none of the indictees has made a move to bow out, but all have been stripped of committee chairmanships.

"This is still America where we are innocent until proven guilty," Sen. Carolyn Walker said on the Senate floor. "I shall be vindicated."

Residents, meanwhile, are glued to their TVs, watching grainy police videos. Walker is accused of 10 felonies, receiving $25,880 in bribes, and filing false campaign finance statements. On video, she says: "We all have our prices."

A video of Rep. Don Kenney shows the northwest Phoenix representative apparently stuffing $55,000 into a gym bag.

He got the money from a man he thought was named J. Anthony Vincent. But Vincent – a one-time Las Vegas TV personality sentenced to a year in federal prison for his part in a stolen-traveler's-check scam – was really police informant Joseph Stedino.

It's just the latest controversy in the Grand Canyon State.

Gov. Evan Mecham was removed from office in 1988 for improperly spending campaign contributions. The state has been devastated by the savings and loan scandal, and both of Arizona's U.S. senators have been lumped in with the Keating Five. The National Football League is threatening to move next year's Super Bowl from Tempe because the state doesn't have an official Martin Luther King Jr. holiday.

"Even with everything that's happened in Arizona, nobody would ever dream something like this was going on," says Phoenix construction worker L.P. Perkins. "It kind of makes you wonder what's going to happen next."

Says radio talk show host John Dayl: "Everyone's still in shock. I guess there's sort of a 'there we go again' attitude."

That's what worries Bruce Merrill, director of research for the Walter Cronkite School of Journalism at Arizona State University in Tempe. "We have simply got to change Arizona's image as a bunch of shoot-em-up cowboys," he says.

But there's not much hope for an image change – or much-needed legislation – this year, says Merrill, who has worked in and around state politics for more than 20 years. "Around the Legislature, the consensus is to pass a budget and then adjourn."

CUTLINE: "I sold way too cheap." – Rep. Bobby Raymond, D-Phoenix, accused of accepting $12,105 and of helping to bribe three other legislators.

CUTLINE: "We all have our prices." – Sen. Carolyn Walker, D-Phoenix, accused of 10 felonies, taking $25,880 in bribes and filing false campaign finance forms. She later proclaimed her innocence, saying: "I shall be vindicated."

CUTLINE: "Ten (grand) is enough." – Rep. Sue Laybe, D-Phoenix, after being asked how much she needed for her campaign. Laybe, accused of accepting $24,960, jokes she has "tacky fingers" after bills stick to her hands.

CUTLINE: "You sure there isn't a camera? I remember those videotapes of the Abscam trial." – Rep. Don Kenney, R-Phoenix, accused of accepting $60,250.

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Philadelphia Inquirer (PA)
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February 25, 1991

Section: NATIONAL

FOR ARIZONA, THE SCANDALS JUST KEEP ON COMING

John **Woestendiek**, Inquirer Staff Writer

PHOENIX Jack B. Jewett, a clean-cut state representative, sat in a Phoenix steakhouse one day last fall, sipping milk with his lunch as a cigarette-smoking, gold-chained Las Vegas lobbyist flashed wads of money and asked him to support casino gambling in Arizona.

The lobbyist, it turned out, was an imposter, planted by police in the "Azscam" investigation that led to indictments this month of seven Arizona legislators on charges of bribery and money laundering.

Today, reporters seek out Jewett almost daily for interviews – not because he took money in exchange for promising to vote for legalized casino gambling in Arizona. But because he didn't.

Maybe that qualifies as news here these days – this just in: honest lawmaker discovered – or maybe, after three years in a cloud of scandal and turmoil,

Arizonans have become more adept at finding silver linings.

Either way, the attention Jewett has received as the only lawmaker to report the Las Vegas lobbyist's suspicious behavior to authorities is puzzling even to him. "I certainly didn't do anything of any heroic proportions," he said last week.

NOT SURPRISED

Indeed, what might be most surprising about the indictments – returned Feb. 5 against seven lawmakers and 11 lobbyists and political activists – is how unsurprised a lot of voters were.

"I moved here from Ohio. I think all politics is corrupt," said Phoenix resident Alexis Johnson, who works for an employment agency. "They just got caught." Then, with the same sigh that can be heard around the state, she went on to lament the latest sullying of Arizona's tarnished image.

Since the loose-tongued Evan Mecham was impeached as governor in 1988 on grounds of obstructing justice and misusing public funds, Arizona's woes have only mounted.

Both of its U.S. senators have been enmeshed in the scandal surrounding Charles Keating's Phoenix-based Lincoln Savings & Loan Association. It has reeled from a recession that has sent property values plummeting and dried up jobs. And dozens of conventions, and the Super Bowl, have withdrawn because

of the state's failure to pass a holiday honoring the Rev. Dr. Martin Luther King Jr.

Now, even the previously staid runoff election for governor this week has turned dirty, as Democrat Terry Goddard and Republican Fife Symington accuse each other of assorted financial improprieties. Both of them received legal campaign contributions from the phony lobbyist.

'ANOTHER BLEMISH'

"You're damn right this is another blemish," said Charles T. Stevens, a lawyer and longtime lobbyist. "Here we are, already with a black eye in the rest of the country, already suffering economically, and people just keep throwing mud on us – or maybe we're throwing it on ourselves. Azscam doesn't help at all. We're becoming the laughingstock of the nation."

The scandal – much of which voters have been able to watch on videotape – has cast a paranoidal pall over the state Capitol, dashing what little faith citizens had left in their elected officials.

"The **public confidence in** the Legislature before the scandal was at an all-time low," said Jewett, a Republican from Tucson. "Because of the scandal, it's nonexistent."

Azscam grew out of an investigation of back-room gambling in Phoenix. Local police hired Joseph Stedino, a veteran informant, ex-con and bit-part actor who once was host of a local television show

called Vegas Nite Life, to infiltrate those operations. Early last year, posing as J. Anthony Vincent, a deep-pocketed front man for Las Vegas gambling interests, Stedino began contacting lobbyists and legislators.

Among the first was State Rep. Don Kenney, a real estate broker and lawyer from Mesa. A videotape made by police on April 30 shows Kenney accepting $55,000 from Vincent and stuffing it in a gym bag.

"You're sure there's not a camera up there? Wave to the camera," Kenney says at one point, pointing to the ceiling. "I remember those videotapes from the Abscam trial."

Kenney, a Republican, was chairman of the House Judiciary Committee, but, like the other indicted House members, he was stripped of his leadership position shortly after the indictment was returned. House and Senate Ethics Committees are investigating the charges to determine what further action to take against the lawmakers.

One of the seven legislators, State Rep. Bobby Raymond, a Phoenix Democrat, resigned last week as part of a plea agreement in which some of his charges were dismissed. Raymond, whose sentencing is scheduled for April, said in his letter of resignation that he was "deeply ashamed of his actions" and apologized for "defiling" the "trust and respect of voters." The letter's contrite tone was in stark contrast to remarks he makes on the videotapes.

"I don't give a . . . about issues," he tells Vincent at one meeting " . . . There is not an issue in this world that I give a s- about. . . . I do deals. . . . My favorite line is what's in it for me."

Raymond, who according to the indictment received $10,000 from Vincent, tells him at other times that his fellow legislators are "unsophisticated whores" and calls Kenney "as big a . . . sleaze bag as I am – or bigger." At another point, he suggests Vincent hire private investigators to take photographs of two representatives who were having extramarital affairs and use those photographs to secure their votes.

Buried within the 212 videotapes, 300 audiotapes and 40 hard-bound volumes of transcripts that are available to the public at the Phoenix Police Department is plenty of fodder for Capitol gossip.

The scandal has amused and titillated some, saddened and revolted others. Some voters say they are shocked. Others say corruption is simply part of politics, or part of human nature.

Sam Steiger, a wry but unsuccessful candidate for governor, pointed to recent legislative corruption scandals in California and South Carolina.

RENEWED DEBATE

"It goes on everywhere," he said. "I don't know of any profession that's immune from it. They (police) spent a million bucks on this. . . . Give me a million bucks and send me to The Philadelphia Inquirer and

I'll find 18. Give me a million bucks and send me to Vatican City and I'll bring down 18 cardinals."

The investigation also has renewed debate about the salary legislators receive, comparatively low nationally at $15,000 a session.

At least three of the indicted legislators had pushed for pay increases. Arguing for an increase in expense money, State Sen. Jesus "Chuy" Higuera, a Democrat from Tucson accused of accepting more than $4,000 in the sting, once held up a coffee cup with a dead cockroach inside – illustrative, he said, of the rundown Phoenix apartment he was forced to rent.

"You can't imagine people being so stupid," said Joyce Downey, a Phoenix political consultant who is heading a campaign to limit the terms of elected state officials. The campaign began in November and, in light of the indictments, appears more likely to succeed.

"We rest our case," she said last week.

PHOTO (1)

1. Evan Mecham; Impeached in 1988

U.S. District Court for the District of Arizona

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May 10, 1991

Section: METRO

TRYING TO REPAIR A DAMAGED STATE

David Broder

PHOENIX It was the kind of day that would leave political reporters in most states gasping. The biggest teachers' union was threatening a strike to protest cutbacks in school funding. A state legislator, indicted on 15 counts of bribery, was plea-bargaining. The wife of a county official committed suicide less than two weeks after her husband had taken his own life. And the state superintendent of public instruction, who had been in the papers for summoning police to settle domestic disputes, announced that she was filing for divorce.

In Arizona, that made it kind of a dull Monday.

This state has been living a soap-opera civic life. It has endured a series of shocks that, in the words of a prominent local businessman, "leave me and a lot of others totally disillusioned and distrustful of politics and politicians."

It began three years ago with the impeachment of Republican Gov. Evan Mecham, an obstreperous

conservative who had, among other things, blocked Arizona's observation of the Martin Luther King Jr. holiday. The Republican state senate voted to oust him from office on charges of misuse of public funds and obstruction of justice.

The furor continued with the collapse of the **financial empire** of Arizona savings-and-loan tycoon Charles **Keating**, whose favors to politicians provoked a **Senate Ethics** Committee investigation of both Arizona senators and three of their colleagues. Although Sens. John McCain and Dennis **DeConcini** were judged not deserving of censure, the controversy over their relationship to Keating has cast a shadow over both men's previously secure careers.

Then, last November, voters rejected a referendum authorizing a King holiday — a decision which cost the state the 1993 football Super Bowl and other major convention business in a swirl of bad publicity.

Next came "Azscam," the indictment last February of four lobbyists and seven state legislators in a "sting" operation featuring secretly videotaped scenes of them accepting bribes from an undercover agent ostensibly pushing a bill to legalize casino gambling.

And finally the state had to endure not one but two nasty campaigns for governor. The November election produced no result, because a write-in candidate denied the required absolute majority either to Republican developer Fife Symington or Democrat Terry Goddard, the mayor of Phoenix.

It was not until the end of February that Symington won the gubernatorial runoff — despite Goddard's charges that he had a conflict of interest in a $30 million loan from the failed Southwest Savings, of which he had been a director, to a Symington-controlled hotel shopping center development here.

After all that, the sandy-haired, 45-year-old Symington seems surprisingly serene as he looks out over Phoenix from the ninth-floor state capitol office he has occupied for the past two months.

Already he has fired one of his first senior appointees for ruffling too many feathers and has seen his austere budget assailed by state senate Democrats as insensitive to the needs of education and the mentally ill. But he is still in his honeymoon period with the voters, who are pleased that he is recommending neither a tax increase nor a cut in aid to cities. The resident press corps finds him "both accessible and rational," as one veteran puts it, "a luxury we have not enjoyed for some time."

Whether his cautious businessman's approach to repairing the damaged reputation of his magnificent state will work in the long run is anyone's guess. Symington is careful in his first elective position not to claim too much.

"There is no way to undo the fact that we turned down the Martin Luther King holiday," he told me. "But remember, we are the only state to have put it to referendum and it lost by 15,000 votes in a state that is only 3 percent African-American. Phoenix, Tucson,

Tempe – all the major cities – commemorate the holiday and so do most major businesses, including my own. So we're really talking about whether 36,000 state employees have the day off with pay."

Symbolically, he concedes, it is more than that – and he supports the legislature's decision to resubmit the issue to the voters in the 1992 election. Meantime, Arizona must live with the stigma of its rejection.

As for the scandals that have rocked the state, Symington sounds almost – if not quite – nonchalant. "We'll have a session of the legislature this fall to look at reform proposals," he said, instantly adding that he wants to be sure that any changes are useful and not cosmetic. "We already have very strict campaign laws," he said, "and I'm not sure you can engineer corruption out. Ultimately, it has to depend on voter scrutiny."

Symington says the surest sign that the civic spirit has survived the shocks to Arizona's pride is the number of able, highly credentialed men and women who sought appointment to the legislative seats vacated by the indicted members. That view is echoed by prominent Democrats, including former Gov. Bruce Babbitt.

The main hope Babbitt and others express for Symington's governorship is that there be no aftershocks. Strong as the frontier tradition of toughness may be, Arizona has endured about as much as it can stand.

David Broder is a syndicated columnist.

Gov. Fife Symington – Accessible and rational
PHOTO

COLUMN NAME: DAVID BRODER

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

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Arizona Daily Star

June 24, 1991

AzScam fallout is far from over, politicians say

Mary K. Reinhart, The Arizona Daily Star

Years from now, folks looking back on the 40th Legislature's first session probably won't recall the landmark water bills or the hazardous waste measure.

They will remember AzScam.

The political-corruption scandal that rocked the Capitol and sent former legislators to jail has been seared into the minds of voters, and some political observers are concerned that the damage will be difficult to undo.

Still, as June began melting into July and lawmakers immersed themselves in end-of-session deal-making, the specter of AzScam seemed far away.

Perhaps it's because the Legislature moved rather quickly to force the resignations of six indicted lawmakers and expel the seventh that the February indictments seemed so long ago. County supervisors wasted little time naming replacements and the Legislature was back at full strength by the end of March.

But the reverberations of AzScam have yet to be felt, say some political observers and lawmakers, who point to the 1992 elections and predict voter apathy, lots of retiring lawmakers and the regurgitation of sordid AzScam details.

"The tragedy of this more than anything else is it reinforces the view people have about politicians," said pollster Bruce Merrill, a professor at Arizona State University. "Down deep in their hearts, people think politicians are a bunch of crooks."

Word of AzScam leaked Saturday, Feb. 2, as legislators were wrapping up a special session to balance a midyear budget deficit. On Feb. 5, Phoenix police and the Maricopa County Attorney's Office announced that 18 people – seven legislators, one former legislator, four lobbyists and six others – had been indicted by a county grand jury on charges that included campaign-law violations, bribery, money laundering and extortion.

The legislators indicted were Sue Laybe, Bobby Raymond, Jim Meredith, Don Kenney and Carolyn Walker, all of Phoenix, and Jim Hartdegen of Casa Grande and Jesus "Chuy" Higuera of Tucson.

The indictments culminated a $1 million yearlong undercover sting operation during which police agent Joseph Stedino portrayed a flashy Nevada gaming consultant looking to buy votes to legalize casino gambling. Stedino, posing as "J. Anthony Vincent," doled out more than $370,000 during the 1990 campaign season to legislators and lobbyists in secretly

recorded meetings at his Phoenix office and apartment.

Within days of the indictments, police released nearly 20,000 pages of transcripts and 300 videotapes showing lawmakers stuffing huge stacks of cash into purses and gym bags in exchange for their votes. The videotapes made national news and excerpts from the transcripts were printed in newspapers coast-to-coast.

By late June, 10 people – including six of the seven indicted legislators – had pleaded guilty. Two former lawmakers got jail time, including Higuera, two received probation and two are scheduled for sentencing later this summer.

House Speaker Jane Dee Hull, R-Phoenix, said the fallout from AzScam isn't over; it's just taken a break until the 1992 elections.

"Everybody in the world has bought the transcripts. Members of the public who have not read the transcripts yet, they will be able to read them in every (election) brochure," Hull said.

"It's certainly not the end when you look at the elections."

If former Gov. Evan Mecham has his way, AzScam will be back in the headlines this fall with the first edition of his daily newspaper, Arizona Newsday. Mecham, who has purchased the transcripts, said the real story of AzScam has yet to be printed.

"They have worked very diligently to put a lid on it and to keep all their insiders intact," Mecham said, referring to the same "power brokers" he believes orchestrated his impeachment and ouster from office in 1988.

"I for one am going to see that the voters keep being reminded that this was the tip of the iceberg and it was covered up," Mecham said. "They think they've got it contained, but it's going to have reverberations for a long way down the line."

That's assuming anyone goes to the polls to vote. Merrill said he's afraid AzScam will cause voter turnout to drop even lower and make potential political leaders change their minds about participating in the process.

"Alienation and cynicism about the system is very high," Merrill said, which means people "don't get involved in the process and they clearly don't vote."

House Majority Whip Jack B. Jewett, R-Tucson, agreed, saying AzScam may coax veteran legislators into retirement or lead to incumbents' defeat.

"I would suspect that you'll see major turnover in the next Legislature, and part of that in response to AzScam," Jewett said. "Some will just be fed up and decide not to run, and others will run and possibly get defeated."

Jewett said the "silver lining" in the state's biggest political scandal is that the appointed legislators are "exceptionally good."

Paul Bender, professor and former dean of the Arizona State University College of Law, said he was heartened to see how many people were interested in the job.

"It suggests to me that there are people who would like to serve in the Legislature if some of the impediments are removed," Bender said.

Salaries should be raised, additional staff hired and the campaign-finance laws reworked to allow higher contribution limits, he said.

"You can't have a set of rules that everybody's looking to get around," he said. "The problem is the amount is so low that it encourages evasion and bundling."

Bundling is the practice of combining many small donations to skirt campaign contribution limits.

Ethics rules also should be more clearly defined, said Ed Hendricks, a Phoenix attorney who served as special counsel to the Senate during Ethics Committee proceedings.

"I suppose the short-term impact that I'd like to see is that legislators will be more sensitive to ethical issues and the avoidance of even the appearance of impropriety," Hendricks said. "And I would be hopeful that it would lead to some meaningful legislative reform."

In a letter to Sen. Jaime Gutierrez, D-Tucson, Ethics Committee chairman, Hendricks outlined six suggestions to improve the process, including raising

legislative salaries, adopting a rule allowing suspension of members in certain cases, clarifying the ethics rule and campaign-finance reform.

Hendricks said the Senate began restoring public confidence by quickly dealing with its two indicted members. Higuera, a former Democratic senator from Tucson, resigned before the panel began deliberations on his case, and Walker, a Phoenix Democrat, was expelled by a unanimous vote of the Senate, following the recommendation of the Ethics Committee.

"I think we handled them as expeditiously as possible, considering the outcry of 'hang the folks,'" Gutierrez said. "I think we did a fair job, but I wish we had never seen it."

Lawmakers plan to grapple with ethics reform next session, including consideration of a rule to allow suspension of members. Already, legislators are policing themselves, he said.

"Unfortunately, I think it took this event to really beat us over the head with it," he said. "Not surprisingly, I think many members are being more cautious about their employment and how their voting may be perceived by the public. I think that's a good sign."

U.S. District Court for the District of Arizona

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Saturday, October 5, 1991 G 102nd year, No. 140

Survey says opinions vary on state ethics

2nd 'AzScam is 'probable'

By Steve Yozwiak
The Arizona Republic

A $5,000 survey of Arizona lawmakers, their staffs, lobbyists and journalists has found that each group holds widely varying ideas about what is ethical and what isn't, and that another scandal like "AzScam" is "probable."

"If we allow everyone to be an ethical universe unto themselves, we have no standards," said Michael Josephson, president of the California-based Josephson Institute of Ethics, which conducted the survey for the state Legislature.

In an effort to get lawmakers all moving in an ethically correct direction, House Speaker Jane Hull said Friday that she will push for stepped-up ethical education of newly elected legislators, periodic ethics seminars for incumbents, a more complete ethics

manual for all lawmakers and a more active role for the House Ethics Committee.

In addition, Hull said an ethics seminar conducted Thursday by Josephson for the state's 90 legislators should boost momentum toward a special session on ethics and campaign reforms, which she expects will begin Oct. 15.

"I think this is a good beginning for that," she said. "It's got people thinking."

But Gov. Fife Symington has balked at committing himself to a special session unless it is limited to topics that won't embarrass GOP lawmakers. Democrats in the Senate say it would be ridiculous for Symington, a Republican, to exclude such issues as public-financing and campaign-spending limits from the debate.

It would appear lawmakers will have to work quickly next week to build a consensus in order to convene a special session.

Among the findings of the Josephson survey, legislators were most likely to disagree, and journalists were most likely to agree, that:

- Major campaign contributors get special attention from lawmakers.

- Lobbyists who assist in campaign fund raising improve their chances of advancing their clients' issues with lawmakers.

- Legislative fund raising should be prohibited during legislative sessions.

Josephson told lawmakers during his seminar that they should study the opinions held by the seven journalists who responded to the survey because they are good indicators of how the voting public feels.

According to the surveys returned by 54 of the 90 legislators, Josephson found that:

- 83 percent believe at least one in five lawmakers engages in vote trading.

- 70 percent believe at least one in five lawmakers provides special access to contributors.

- 43 percent believe at least one in five lawmakers accepts gifts or favors.

- 29 percent believe at least one in five lawmakers engages in legislative action when he or she has a financial conflict.

- 38 percent believe at least one in five lawmakers hires his or her staff for personal reasons.

The last finding was one that especially irritated Hull, who said legislators and staff already should know that such conduct is not allowed.

"It was disappointing . . . that some of the 'legislative' respondents were either that insensitive to public perceptions or that lacking in knowing what is right or wrong," Rep. Mile Palmer, D-Bisbee, said.

Earlier this year, the Legislature was rocked by the AzScam scandal, in which seven lawmakers were indicted in a bribery scheme. Six resigned and one was expelled.

In his summary, Josephson concluded that "many forms of conduct viewed to be improper by a majority of legislators occurs with great regularity."

"If at least 20 percent of the legislators engage in ethically questionable conduct," he said, "it is probable that new harmful scandals will arise."

ETHICS CENTER'S SURVEY RESULTS

Percentage of Arizona legislators, their staff, journalists and lobbyists that agree or strongly agree with the following statements.

"Most major campaign contributors do get special advantages if they need the aid of a legislator."

Respondents	Agree
Legislators	42%
Staff	66%
Journalists	100%
Lobbyists	43%

"Generally, lobbyists who give, direct or raise campaign funds substantially improve their chances of accomplishing their clients' goals by virtue of their contributions."

Respondents	Agree
Legislators	54%
Staff	73%
Journalists	100%
Lobbyists	72%

Source: Government Ethics Center

Contributing to this article was Mary Jo Pitzl of *The Arizona Republic*.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Hull relies on lobbyists she regulates for funding

By Michael Murphy
and Kris Mayes
Staff writers

Secretary of State Jane Dee Hull is in charge of regulating the state's 5,000 lobbyists, but she's also relying on many of them to raise money for her possible gubernatorial bid in 1998.

Not only are lobbyists donating, heavily to her "Hull '98" campaign, they're actively playing a role in raising thousands of dollars from others to help the secretary of state build a campaign war chest should she decide to seek higher office.

Although no one has questioned Hull's record since she took over the office in January 1995, some wonder whether it is appropriate for the secretary of state to have such close ties to members of a group she is supposed to regulate.

Hull, 61, has been put in the political spotlight recently because she is first in line to succeed Gov. Fife Symington, who is facing a March federal trial on 23 felony counts.

In an interview, Hull said her friendships with lobbyists have no effect on how she does her job as enforcer of the state's lobbying laws.

"I've looked at my own integrity for enough years to know they really aren't going to get anything from this office, nor have they ever asked for anything," said Hull, a longtime activist in Republican politics. "What this office can deliver is fairness."

She added, "We follow the law. . . . If we have problems, we report them to the (state) attorney general. There's no campaign contribution that would make me do anything differently."

But a political system that shrugs off such apparent conflicts – indeed, a system that appears to thrive on them – troubles some defenders of the public interest.

"That presents a conflict for her," said Tim Hogan, executive director of the Arizona Center for Law in the Public Interest. "It's not necessarily a legal conflict, but when you've got the regulator for the lobbyists taking donations from them, and I assume in substantial amounts, that presents a pretty big problem."

A recent Hull fund-raiser illustrates the close relationship between the secretary of state and the people she is in charge of monitoring.

Many of the state's top lobbyists played a key role in organizing a Dec. 4 fund-raiser for Hull at the Arizona Biltmore, which featured an appearance by former Vice President Dan Quayle. The lobbyists helped to turn out 600 guests who paid $125 each to

dine on pasta and cheesecake in one of the Biltmore's cavernous ballrooms.

The event was a virtual "who's who" of corporate influence peddlers, many of whom helped to sell tables by phoning their clients and asking them to buy tickets.

According to a program for the event, more than half – 92 of 178 – of the members of Hull's host committee were registered lobbyists, including Robert Fannin, who represents the Arizona Chamber of Commerce and health-maintenance organizations; Michael Preston Green, who lobbies for the Smokeless Tobacco Council; and Southwest Gas lobbyist Richard Foreman.

Oil-and-gas lobbyist Charlie Stevens was asked to sell four tickets to the luncheon, a task he did not find too laborious.

"I said, 'What the hell,'" Stevens said, adding that most of the state's other lobbyists were equally quick to comply. "They see certain things on the horizon. Like a criminal trial," he added, referring to the governor's legal troubles.

Another lobbyist, who requested anonymity, said most lobbyists are of the opinion that they need to begin building a friendship with Hull.

"There's an awful lot of lobbyists who have suddenly become very interested in the Secretary of State's Office," the lobbyist said. "It's a key office to us."

In any other year, Hull's record-keeping office would hardly be considered a political powerhouse and certainly would not be a magnet for corporate lobbyists' largess.

But all eyes are on Hull because of her role as Symington's successor if he is convicted.

Hull said she didn't directly ask lobbyists to sell tickets to her fund-raiser. That was left to her campaign-finance director, Lisa Danka.

Hull said she asked some people to serve on the host committee for the fund-raiser but said, "It wasn't lobbyists. It was what I call real people."

The luncheon grossed an estimated $70,000. Hull held another large fund-raiser last year at the Camelback Inn that raised $50,000.

Although there's nothing illegal about the high-profile role of lobbyists in Hull's fund-raising, their involvement underscores the extraordinary influence that special interests play in raising money for political candidates.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Lobbyists bearing gifts solidify grip on Capitol

Lawmakers rely on fund-raising help

By Kris Mayes
and Michael Murphy
Staff writers

After Tucson political novice Sally Ann Gonzales won her first battle for the Legislature, she faced a new one: erasing a $3,000 campaign debt.

Then, her fellow Democrats let her in on a little secret: Lobbyists are always ready to help a lawmaker in need.

Indeed, the election results were barely in before some of the state's top lobbyists organized a $75-per-person fund-raiser for Gonzales in Phoenix. With one breakfast, her financial problems disappeared.

And she didn't even have to ask.

"I didn't talk to the lobbyists," she said. "Word got out, and they organized it for me."

Her experience is not unique.

A decade after voters decided to limit the influence of special interests in legislative campaigns, lobbyists wield more clout than ever.

They're the first people candidates turn to in order to raise more than $50,000 to win a job that pays $15,000 a year.

An *Arizona Republic* survey found that lobbyists played a significant role in the campaigns of 11 of the top 20 money raisers in the Legislature.

Lobbyists not only raised money for the 11, they served on their campaign-finance committees, allowing the lobbyists to tap their clients on behalf of the candidates.

Candidates are required to disclose the names of their campaign chairmen only and do not have to reveal the names of committee members. The *Republic* obtained the information for its analysis by surveying individual lawmakers.

Some lawmakers, and even some lobbyists, are beginning to question the intimate relationship between the two.

"I'm not sure it's appropriate for people who lobby to have that much of an intimate influence on the fund-raising for these campaigns," said Sen. Chris Cummiskey, D-central Phoenix.

Cummiskey, one of the leaders of campaign-finance reform in the Legislature, plans to introduce a bill next year that would require candidates to disclose all members of their finance committees – anyone who has been authorized to solicit money on their behalf. He also is considering an outright ban on lobbyists serving on campaign-finance committees, although that idea's chances are less likely.

Cummiskey said full disclosure is important.

"It gives you a better sense of who's involved in these campaigns and who's raising money for them. I think that's something the public has got to be aware of," he said.

Some top lobbyists agree.

Janice Goldstein, chief lobbyist for the Arizona Trial Lawyers Association, would support banning lobbyists from campaign-finance committees. She refuses to sit on such committees now.

She was asked five times to sit on Gonzales' host committee by a fellow lobbyist who was organizing the freshman lawmaker's fund-raiser. "I said, 'No, I don't do that.' I think it's tacky," Goldstein said. "I don't like registered lobbyists being on finance committees. It's inappropriate.

"I think there's a lot of pressure that comes with it (serving as fund-raisers). A lot is expected. Oftentimes, it's the legislators who expect the lobbyist to do this for them. Oftentimes, it becomes not a favor, but a matter of, 'You will do this.'"

Ironically, it was a campaign-finance reform measure passed by voters in 1986 that turned lobbyists into fund-raising machines. Proposition 200, aimed largely at political action committees, severely restricted the amount of money that candidates can raise from PACs. That sent them in search of individual contributors who previously sent their money to PACs.

Today, members of special-interest groups who once funneled their money into PACs give directly to candidates at the direction of their lobbyists. In order for a lobbyist to bundle the individual contributions legally, the lobbyist must be serving on the candidates campaign-finance committees.

"If I'm not on the finance committee, I can't bundle," said Charlie Stevens, a lobbyist for oil and gas companies and one of the harshest critics of lobbying excesses in Arizona.

Stevens says candidates should identify the lobbyists they use for fund-raising, but he believes banning them from contributing would be unconstitutional.

"I would love that. It would save me a lot of money. But you can't do that," Stevens said, noting the First Amendment's protection of free speech.

Stevens said he served on 10 to 13 campaign-finance committees in the last election cycle and felt uneasy each time.

"I have difficulty calling up a client or a friend and saying, 'Would you contribute to these candidates?' I hate it," he said.

"But very few of us have perfect jobs. It's part of the work, and I do it."

By all accounts, Stevens and his colleagues worked hard this year.

Newly elected Rep. Roberta Voss, a Republican from Glendale, held a $100-per-person fund-raiser at the downtown offices of the Streich Lang law firm on Dec. 18. Nine of the 13 members of her finance committee were lobbyists.

Her invitation read, "After the smoke has cleared . . . after the battle has been won . . . Help!"

Scott Bundgaard, one of the Legislature's most prodigious fund-raisers, got his start with the aid of top lobbyists. After his election in 1994, Bundgaard held a $100-per-person campaign debt-retirement party at Biltmore Fashion Park.

The event's host committee read like a "who's who" of prominent corporate lobbyists. Thirty-one of 34 members of the host committee were lobbyists, including tobacco industry representatives Don Isaacson, John Mangum and Phil MacDonnell, and health-care lobbyist Kevin DeMenna.

The Legislature's most successful fund-raiser defends the practice of tapping lobbyists for campaign cash.

Sen. John Kaites, R-Glendale, who raised $84,763 in the past campaign cycle, said that by having lobbyists collect checks, candidates are able to spend their time governing.

"I don't think it's feasible to not authorize other people," said Kaites, who had 38 lobbyists on his committee. "That's what a campaign is all about. It's

about getting as much support as you can from other people."

Because no one lobbyist could ever raise enough money from his or her clients to finance an entire campaign, he argues, candidates are effectively prevented from becoming beholden to any one person.

"The situation requires you to have a broad base in order to raise the money," he said. "You can't do it with one lobbyist. You have to do it with a lot of lobbyists."

Sen. Tom Patterson, who is building a funding base for a 1998 gubernatorial bid, also said lobbyists are integral to modern campaigns.

"It's hard to raise the amounts of money needed to run a well-financed legislative campaign without lobbyists," he said. "That's sort of a fact of life."

Without lobbyists, Patterson added, "you would have a severe handicap in raising money."

Others respectfully disagree.

Newly elected Rep. Tom Horne had to raise more than $50,000 to get through a five-way GOP primary but said he took only a few thousand from lobbyists.

Horne said he purposely avoided having lobbyists play a major role in his fund-raising. Instead, he relied on friends and contacts developed during his 25 years of practicing law in the Valley.

"I really think there's a temptation for candidates who need lobbyists to raise money for them to take

premature positions on issues to please the lobbyists," Horne said. "I think that really has a very negative impact on the Legislature being seen as a rational public-policy institution."

Rep. Barry Wong, R-north-central Phoenix, spent hours each day calling old friends, members of the Asian-American business community and other non-lobbyists to drum up the $67,000 it took to retain his seat in the Legislature.

A former lobbyist, Wong, was perfectly positioned to cash in on the lobbying community. In the early 1990s, he worked for mega-lobbyist Don Isaacson, whose big-money clients include the Tobacco Institute and the State Bar Association. Wong attended a number of candidate fund-raisers on Isaacson's behalf, gaining an insider's view of buying access at the Legislature.

He didn't like what he saw.

"I could have done that if I'd wanted to," he said of using his lobbying contacts. "I could have called 10 lobbyists and said, 'I need you to raise $2,000 each.' But as a former lobbyist, I hated when legislators did that to me."

TOP 20

These are the top 20 fund-raisers at the Arizona Legislature for 1996, according to campaign-finance reports on file with the Secretary of State's Office. Legislators are paid $15,000 a year.

1. Sen. George Cunningham, D-Tucson, $89,828.
2. Sen. John Kaites, R-Glendale, $84,763.
3. Rep. Barry Wong, R-north central Phoenix, $76,123.
4. Sen. Marc Spitzer, R-north central Phoenix, $71,756.
5. Sen. Tom Patterson, R-east Phoenix, $71,430.
6. Rep. Sue Gerard, R-north central Phoenix, $69,390.
7. Rep. Tom Horne, R-northeast Phoenix, $57,249.
8. Rep. Ken Cheuvront, D-central Phoenix, $52,239.
9. Rep. Andy Nichols, D-Tucson, $50,787.
10. Rep. Herschella Horton, D-Tucson, $50,566.
11. Sen. Chris Cummiskey, D-central Phoenix, $48,566.
12. Sen. Ruth Solomon, D-Tucson, $46,087.
13. Sen. Brenda Burns, R-Glendale, $44,702.
14. Rep. Jeff Groscost, R-Mesa, $38,525.
15. Sen. Sue Grace, R-northeast Phoenix, $35,859.
16. Sen. Randall Gnant, R-Scottsdale, $34,823.
17. Rep. Freddy Hershberger, R-Tucson, $32,954.
18. Rep. Barbara Leff, R-northeast Phoenix, $32,154.
19. Sen. Scott Bundgaard, R-Glendale, $32,040.
20. Rep. Jim Weiers, R-northwest Phoenix, $30,699.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Special interests funnel funds to key lawmakers

Up to 80% of money comes from PACs, lobbyists

By Michael Murphy
and Kris Mayes
Staff writers

Glendale Republican Rep. Jean McGrath isn't shy when it comes to showing affection for her favorite lobbyists.

She once led a packed House committee hearing in a rousing verse of *Happy Birthday to You* for a well-known lobbyist. It was an act of fealty that stunned even longtime lawmakers, including committee chairman, Republican Speaker-elect Don Aldridge. He reprimanded McGrath afterward.

Campaign-finance records show that McGrath has good reason to be grateful to lobbyists and political action committees, the special-interest groups that funnel thousands of dollars into lawmakers' campaign coffers each year.

McGrath, who sits on the influential House Environment Committee, received 80 percent of her total campaign contributions from lobbyists and PACs in 1995-1996.

She wasn't alone. The committee's chairman, Russell "Rusty" Bowers, R-Mesa, also received 80

percent of his total campaign contributions from lobbyists and PACs.

In fact, five of the 10 Environment Committee members, whose records were analyzed by *The Arizona Republic*, received more campaign funds from special-interest groups and their representatives than from individual donors.

The environment panel is just one example of how lobbyists and special interests routinely dole out campaign contributions to members of powerful legislative committees.

Critics of the Environment Committee say the money trail supports their contention that the panel's title is a misnomer. They say it should be called the "Deregulate and Do Whatever You Want Committee" because of its reputation for rubber-stamping legislation that provides regulatory relief to big business, industry and agriculture.

"Since Representative Bowers has chaired that committee, it has not been the Environment Committee," said Sandy Bahr of the Arizona Audubon Council.

According to Sierra Club lobbyist Raena Honan, generous spending by industry and business on committee members' campaigns has given corporate lobbyists extraordinary access and influence.

"The fact they (members) tend to call upon the industry lobbyists," Honan said. "Not only do they know them well, they also funded their campaigns.

You can essentially buy the podium. That sort of access goes to the people with the most clout and the most money."

Bowers bristles at such criticism, dismissing it as talk that "the Sky is falling." He says he has taken a reasonable approach to balancing environmental protection with the needs of business.

Still, the committee's record for providing a helping hand to industry is clear. In the 1996 legislative session, it approved the Environmental Audit Measure, which would have allowed businesses to report pollution to the Arizona Department of Environmental Quality in exchange for secrecy about the incident and immunity from civil and criminal prosecution. The measure did not make it to a vote of the whole House.

Another bill that found favor with the committee was a measure designed to weaken the state's Groundwater Protection Act by offering businesses a year-long moratorium on a strong groundwater clean-up enforcement provision.

Perhaps the most notorious measure promoted by the committee was one that exempts the state from a world-wide ban on Freon production. McGrath led the fight to defy accepted scientific thinking that chlorofluorocarbons contribute to the erosion of ozone in the atmosphere.

The bill was signed into law but has no practical effect because it conflicts with federal law.

Members of the panel say they are not influenced by the flow of contributions into their campaign coffers from industry and business groups, which range from the mining industry to chambers of commerce.

They say they pay little attention to the groups that fund their campaigns and would never allow their votes to be purchased with a political contribution.

"I'm insulted that you could even think that I could be bought with a contribution," McGrath said. "I have no problem with the way that campaigns are funded, and I certainly don't want the alternative, which is public financing."

In McGrath's case, she had a 4-1 ratio of special-interest funds to individual contributions, according to an analysis of campaign-finance reports from Jan. 1, 1995, to Sept. 30.

Many of the PACs that gave to her re-election effort, including Phelps Dodge, Motorola and the Salt River Project, have business before the Environment Committee.

McGrath is "the most blatant" booster of businesses and industries seeking relief from the committee, Bahr said.

"They think she will do what they want her to do," Bahr said.

McGrath said she didn't solicit the contributions and said she believes it is typical for an incumbent

lawmaker to receive a larger share of donations from PACs and lobbyists than from individual donors.

"Isn't that normal with incumbents? I'm not surprised," McGrath said.

Another Republican on the panel, Rep. Jim Weiers of Phoenix, doesn't share McGrath's view.

Weiers deliberately avoids accepting large numbers of PAC and lobbyist contributions, preferring to accept support from residents of his west Phoenix community. Individual donations outnumbered PAC and lobbyist contributions to Weiers Campaign kitty by a ratio of 2-1.

"I think it's wrong to chase PAC contributions," Weiers said, adding that he makes it clear to those PACs that do contribute that their checks buy them nothing.

"There's no strings attached, and I made that very clear four years ago," Weiers said. "My vote is my vote."

Bowers scoffs at the idea that the groups gain access through contributions. He calls PACs "nothing more than a conglomeration of lots of citizens" and views lobbyists as valuable sources of information. In the next legislative session, Bowers will serve in the Senate.

One lobbyist supporter of Bowers, Richard Foreman, once took the lawmaker and his wife out for an

expensive meal on their wedding anniversary, courtesy of Foreman's employer, Southwest Gas.

Bowers, though, is steadfast in saying that no contributors gain special favors through their contributions. He even sends a letter to each telling them that "your donation buys you absolutely nothing but my desires for good government."

Another Republican on the panel, Rep. Scott Bundgaard of Glendale, said contributions from business and industry flow naturally to his campaign because he supports bills for cutting government red tape and regulations.

"The people that contribute to me do not drive my vote," he said. "However, once you establish a voting record, people who agree with you are more likely to contribute to your campaign.

"My politics and philosophy are more anti-regulation and more personal responsibility."

Corporations also say that their money follows legislators who are supportive of their issues.

The Grand Canyon State Electric Cooperative Association found a number of friends on the House Environment Committee, contributing to nine of the 10 members.

Tom Jones, CEO of the rural utility group, said the contributions were meant as a reward for lawmakers who voted to slash regulations that were hamstringing local utilities. Among the bills the

utilities successfully pushed through the Legislature in the past four years was one exempting consumer-owned cooperatives from oversight by the Residential Utility Consumer Office.

"We had some specific pieces of legislation that we were interested in, and I would suspect that they were supportive of those," Jones said of the lawmakers to whom the Grand Canyon co-op contributes through its PAC. He estimated that the PAC gave to as many as 70 lawmakers last year.

Environmental activists contend that they and other grass-roots groups are effectively sidelined by the heavy spending of PACs and lobbyists on the Environment Committee. The result is that those groups, and not ordinary citizens, have the upper hand when it comes to lawmaking.

"We don't have big contributors," said Bahr, who noted that the Sierra Club's PAC has handed out $50 contributions to a handful of lawmakers.

Honan said environmentalists can't compete with corporate lobbyists who are paid to be at the Legislature representing industry interests.

"Most of our members are working and can't come down there and sit all day, and the industry lobbyists are paid to sit there all day," she said. "They're all paid to be there.

"So money is the key."

U.S. District Court for the District of Arizona

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Baltimore Sun (MD)
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August 12, 1997

Section: News (National and Foreign)

ARIZONA PONDERS ITS HIGH-OFFICE HEADACHES; GOVERNOR'S FRAUD TRIAL JOINS CORRUPTION CASES AMONG OFFICIALS SINCE 1988

ASSOCIATED PRESS

David Ureno just shrugs at the prospect of a second Arizona governor in a decade being driven from office under a legal cloud.

Arizona isn't any more corrupt than anywhere else – its public officials just have the misfortune of getting caught, Ureno said.

"Politics is politics," the 46-year-old truck driver said as a federal jury in Phoenix deliberated in the bank fraud case against Gov. Fife Symington. "People do crooked things, and sometimes they get caught and sometimes they don't. He can't be completely honest or else he'd be God's sidekick."

The 12-member jury received the Symington case late Friday afternoon in U.S. District Court and met for about an hour before recessing for the weekend.

Yesterday, before recessing for the night, the jurors spent their first full day deliberating whether Symington deceived banks and other lenders to get millions in loans when he was a real estate developer.

For other Arizonans, Symington is the latest reason to be ashamed of a state that has the dubious distinction of having elected – in succession – two of the 11 U.S. governors indicted this century.

"We can't seem to find a governor who is not corrupt," said Katie Edwards, a sociology student at Arizona State University in Tempe.

Margot Childers, co-owner of a Western clothing store and a service station in Flagstaff, said friends from out of state always ask: "What's wrong with Arizona?"

"It's like, don't we have any decent people in Arizona?" Childers said. "It's always embarrassing to talk about our governor."

Arizona's latest string of scandals began in 1988, when Republican Gov. Evan Mecham was indicted in court and later impeached by the state Senate. A jury later acquitted Mecham of fraud and perjury charges for allegedly hiding a campaign loan.

Symington was the first Republican businessman to publicly back a recall drive against Mecham after the 1988 indictment. Symington later beat Mecham in the 1990 GOP primary.

The next scandal hit shortly after Symington was elected in 1991; 20 state lawmakers and lobbyists were indicted in a bribery case known as AzScam. Seven legislators were convicted on charges connected to the sting operation, in which lawmakers were offered cash in exchange for votes to legalize casino gambling.

Symington is on trial on 21 charges of bank fraud, attempted extortion and perjury. He is accused of misrepresenting his shaky financial condition to get millions of dollars in loans to prop up his real estate business.

"I think Symington is kind of getting crucified," said Richard Blomberg, 79, of Kingman. "You have people any place in the world that are bad apples. You have to be broad-minded about that kind of stuff."

The fact that Symington's 13-week trial has not caused chaos is something to be proud of, said Bob Aprahamiam.

"The judicial process is reaching a decision," said Aprahamiam, 57, of Phoenix. "I think Arizona should be proud that it has a process that works."

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U.S. District Court for the District of Arizona

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Section: Main News

Arizona Governor Guilty of Fraud, Forced to Resign
Law: Federal jury finds Fife Symington lied to lenders in order to save his real estate empire. He is state's second chief to be ousted from office in less than a decade.
LOUIS SAHAGUN
TIMES STAFF WRITER

A federal jury in Phoenix on Wednesday convicted Arizona Gov. Fife Symington of lying to lenders to get millions of dollars for his failing real estate ventures, making him the state's second governor to be ousted in less than a decade.

The great-grandson of steel baron Henry Clay Frick stared downward as the five-woman, seven-man jury – which had deliberated 54 hours – returned the verdict that stripped him of the office he had held since 1991 and may send him to prison for years.

The 52-year-old Republican, now bankrupt, is scheduled for sentencing on Nov. 10.

At a news conference, Symington tearfully said he plans to relinquish his office on Friday to Arizona's

Republican secretary of state, Jane Hull – an experienced, assertive and highly regarded former state legislator who many believe will be anything but a caretaker governor.

"Every once in awhile there is salvation in surrender," he said. "I am returning to private life with my head up, spirits high and my heart full of gratitude."

Symington was indicted last summer after a five-year probe by the U.S. attorney's office in Los Angeles. He was charged with 19 counts of inflating his assets on financial documents when he wanted money, and understating his wealth when he wanted to get out of loan guarantees; and one count each of attempted extortion and perjury.

The jury found him guilty of seven counts of filing false financial statements to banks. He was acquitted of three counts, including the inflammatory charge of trying to use his power of office to extort concessions from a pension fund he owed $10 million. U.S. District Judge Roger Strand declared a mistrial on the rest of the counts – on all of which the jury had deadlocked.

"Today," said Melodee Jackson, executive director of the Arizona Democratic Party, "a jury of peers, in a very complicated case, decided that everyone must play by the same rules and no one is above the law."

John Dowd, Symington's lead attorney and a specialist in white-collar crime, promised to appeal the convictions, in part because of the dismissal and

replacement of a juror seven days after the start of deliberations.

Dowd has argued that 74-year-old Mary Jane Cotey, who reportedly wanted to acquit Symington on all charges, was improperly dismissed from the panel after other jurors accused her of being incapable of or unwilling to participate in deliberations.

"We tried a hell of a case; I'm sorry Fife has to take the consequences," he said. "But we'll win this case eventually. We've got to take it one inning at a time."

During the 16-week trial, prosecutors portrayed Symington as a real estate con artist who swindled lenders into giving him $200 million in loans between 1986 and 1991 – and who did not make good on financial guarantees when his construction projects failed.

After reviewing 1,400 documents and three months worth of tedious, technical and often conflicting testimony from nearly 40 witnesses, the jury agreed.

In his final argument, Assistant U.S. Atty. David Schindler said that Symington deceived lenders to keep his real estate empire of gleaming office buildings and shopping centers afloat by creating the impression he was successful, creditworthy and worth millions of dollars.

"He liked the prestige that came with the illusion that he was a big real estate developer," Schindler told the jury. "And, ladies and gentlemen, he parlayed that illusion . . . into the job he holds today."

Ultimately, Symington watched all but one of his two dozen projects collapse like dominoes when the real estate market went into a free-fall here in the early 1990s.

Symington – both in testimony and through his attorney – asserted during the trial that he never profited from the "unintentional" errors and omissions in his financial statements, that his accountants should have caught the blunders and that no one ever complained.

Moreover, Symington said, his lenders did not rely on the questionable information to make a decision when they gave him hefty development loans. Instead, he said, he received the loans on the basis of his reputation and track record as a developer.

In effect, he seemed to argue, he was too busy reshaping Arizona society and creating jobs to pay attention to details in his financial statements.

"In hindsight, it's easy to say that Mr. Symington should have done a better job with his financial statements," Dowd told the jury. But "he guaranteed and delivered what they [lenders] paid for with their money."

Not so, argued Schindler, who used Symington's own testimony and financial records to establish a pattern of deceit.

Between 1986 and 1991, Schindler said, Symington prepared numerous sets of false personal statements – bearing the same "as of" dates but reporting

different net worths – for various lenders, including First Interstate Bank and Valley National Bank.

For example, Symington fabricated three versions of his financial condition as of Dec. 31, 1989. One, submitted to a bank from which he needed money, showed a net worth of $5.3 million. Another, supplied to a bank from which he sought loan concessions, showed he was $4.1 million in debt. A third submission said that he had not prepared a statement for that period.

Now Symington, a Harvard-educated, son of a wealthy East Coast family whom critics refer to as "the only man in Arizona who doesn't own a T-shirt," joins the state's growing list of notorious politicos and shady business owners who made their mark during the 1980s – and then ran afoul of the law.

In 1988, then-Gov. Evan Mecham was impeached for diverting inaugural ball donations into a loan for his ailing Pontiac dealership. Symington was among the first prominent businessmen to publicly support Mecham's recall.

In 1990, eight state legislators were captured on videotape accepting wads of cash from an undercover agent in a sting operation known as AzScam. Then came the "Keating Five," a group of federal lawmakers with personal ties to savings-and-loan swindler Charles H. Keating Jr.

Back then, the antidote to the parade of scandals seemed to be Symington, who promised to attract

industry, boost tourism, restore political stability and clean up the state's image. Arizona Trend magazine even called him a man with the "credentials of an East Coast dandy, but a Westerner's love for land deals and brawls."

"It's been like an epidemic that has tragically obliterated our former favorable record," said former Phoenix Mayor Terry Goddard. "Once, we were known as a small state that produced great national leaders and presidential candidates – people like Barry Goldwater and the Udalls."

Supporters praised Symington's record of cutting state income taxes by 30%, overhauling the state justice system, fighting federal intrusion into state affairs and cutting regulations to make Arizona more friendly to business. But even those who lionize the conservative leader have grown weary of his intense personal struggles and the turmoil wreaked on the state.

"Regardless of what happens to Fife Symington," said Jess Yescalis, a spokesman for the Arizona Republican Party, in an earlier interview, "there is a definite yearning for political stability in Arizona. People here are tired of having our governor being in court and taking fire."

Special correspondent Camille Kimball in Phoenix contributed to this story.

U.S. District Court for the District of Arizona

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The Arizona Republic Sunday, December 14, 1997

Holiday premium on fund-raising

Reforms fell by wayside

Arizona lawmakers going for broke before Jan. 12 end to soliciting season

By Michael Murphy
The Arizona Republic

Arizona lawmakers are on a frantic holiday dash for campaign cash, and they're turning to a familiar ally: the state's top lobbyists.

"'Tis the season," groaned Janice Goldstein, lobbyist for Arizona trial lawyers, contemplating a hectic schedule of wine-and-cheese "meet and greet" receptions and broiled chicken lunches.

The race to raise money is spurred by a looming deadline: Once the Legislature convenes Jan. 12, lawmakers and the governor will be barred from soliciting funds from lobbyists while they're crafting laws. The ban was passed by the Legislature in 1992 in the wake of the AzScam political corruption scandal.

Today, lobbyists are helping lawmakers beat the deadline by finding donors, mostly clients, willing to dole out hundreds of dollars each for 1998 political campaigns at a time when most people are trying to scrape up cash to buy Christmas presents.

The pace is so frenzied that lawmakers are tripping over each other with three to four fund-raising events a night.

"Hang on to your knickers for that week before Jan. 12. I guarantee you it will be like hell's a-poppin'," Goldstein said.

The scramble for cash comes a year after *The Republic* revealed the powerful role of special interests at the Legislature in "The Invisible Legislature" series. It showed how lobbyists help to get candidates elected by gathering signatures and raising money for them and then, once in office, by helping them write and circulate legislation.

Several lawmakers early this year introduced legislation designed to curb the influence of lobbyists, but the bills, including a gift ban endorsed by then-Gov. Fife Symington, died.

Today, the tango between lawmakers and lobbyists continues unabated and the Legislature's few reformers are promising another attempt at changing the system.

"We're going to start that drill again," said Sen. Tom Patterson, R-Phoenix, who last year hammered out a lobbyist gift-ban bill. The measure won support but failed after then House Speaker Don Aldridge, R-Lake Havasu, refused to hear it.

Democrats are drafting bills that would go even further, prohibiting lobbyists from serving on candidates' campaign finance committees and curbing their ability to "bundle" contributions from clients.

Sen. Chris Cummiskey, D-Phoenix, said the pre-session holiday rush for campaign dollars by lawmakers illustrates the problem.

The intent of the ban on fund-raising during the legislative session was to diminish the financial influence of lobbyists and special interests while issues affecting them were before the Legislature or the governor. It was enacted after the Legislature was rocked by seamy revelations resulting from a Phoenix Police sting. AzScam led to the indictment of seven lawmakers.

Loopholes, loopholes

To get around the ban, many lawmakers take the path of least resistance by asking lobbyists to help them organize fund-raisers before the Legislature convenes.

"It's like shooting fish in a barrel for many members because they go to the same lobbyists time and time again," Cummiskey said.

Reforms passed by voters in 1986 were supposed to prevent the practice known as bundling contributions, but candidates and lobbyists have found a loophole in the law.

Bundling occurs when an individual collects a number of checks from individuals and then presents them to one candidate.

Lawmakers get around that prohibition by appointing lobbyists to their campaign finance committees, a role that allows them to gather checks from others.

The politician knows the checks were collected by one special interest, but the public rarely learns the role that lobbyists play because candidates are not required to disclose the names of their finance committee members.

"Of course we allow bundling. You just have to be on the finance committee," Patterson said.

Consider a fund-raising luncheon last week for House Speaker Jeff Groscost that raised between $65,000 and $70,000 for the Mesa Republican.

A program for the event showed that Groscost's finance committee is a who's who of Arizona lobbyists. Forty-five of the 55 members were registered lobbyists, including tobacco industry representatives Phil MacDonnell and Mike Williams, utility lobbyists Martin Shultz and Russell Smoldon, and Alan Immerman, who represents chiropractors.

Most of the lobbyists served as "table sponsors," selling 10 tickets at $200 each, for a total of $2,000 in contributions.

Under Arizona law, an individual can give $300 to a state legislator every two years.

Groscost's luncheon, while larger than most, was hardly an aberration in Arizona politics.

Part of the job

Lobbyist Kevin DeMenna, one of Groscost's table sponsors, serves on a "couple dozen" other candidate campaign finance committees.

DeMenna, whose clients range from the American Cancer Society to Sumitomo Sitix of Phoenix, acknowledged that the rush by lawmakers to raise funds before the session begins, combined with the increasing campaign costs, has "amplified the role lobbyists play in fund-raising."

But DeMenna said his campaign work on behalf of lawmakers doesn't grant him any special political favors at the Legislature, just greater access.

Another prominent lobbyist who "hates" the pre-session scramble by lawmakers to raise funds said few lobbyists have the luxury of saying no.

"How can you refuse? The reality is we have to do it," said the lobbyist, who spoke only on condition of anonymity.

"I think most lobbyists would prefer not be involved, but the only way you can do that is to not permit lobbyists to serve on campaign committees because it doesn't look proper."

Of the more than 5,000 lobbyists registered in Arizona, only a handful, including Goldstein and Chris Herstam, refuse to sit on political finance committees.

"I've never quite understood why a legislator would want a bevy of registered lobbyists as their fund-raisers," Goldstein said.

But many politicians view lobbyists as a necessary part of raising funds.

"People that aren't involved in government don't want to give money," said Gov. Jane Hull, who relied heavily on lobbyists to help her raise more than $500,000 at a Nov. 18 event.

And Groscost said the influence of lobbyists has been overplayed.

Sen. Carol Springer, R-Prescott, has a "bunch of lobbyists" on the finance committee for her exploratory campaign for state treasurer.

What's the answer?

But Springer, like Groscost, said the answer to reforming the system is not excluding lobbyists from campaigns.

The lawmakers favor full and immediate disclosure of campaign donations.

"The real bottom line is, these laws that we have don't work the way I think the public thinks they

should work," Springer said. "There's always a loophole."

For members of the minority and those without Groscost-like clout, the current system can be frustrating.

Rep. Ken Cheuvront, D-Phoenix, staged a fundraiser at a downtown Phoenix restaurant on the same night this month that three other lawmakers were out raising money.

"I can tell you, I wasn't the first choice of some of the lobbyists," he said.

Cheuvront doesn't rely heavily on lobbyists for his campaign and said that whatever reforms are enacted, they first must address the checkbook power that special interests have at the Legislature.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

State of Campaign CONFIDENTIAL
From: Josh Silver April 6, 1998

* * *

MEDIA

Still quiet on the media front. I am working of preliminary press releases in anticipation of any unexpected coverage. We must always remember three primary points:

1) Our message is about the problem in Arizona politics. The system is broken, politicians are sold out to special interests, and as a result, the issues near and dear to us are left unaddressed.

2) Clean Elections is NOT about public funding. It's about spending limits, getting rid of special interests, and leveling the playing field.

3) Clean Elections is a REFORM issue. It is not a tax issue, it is not a liberal issue.

* * *

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

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Thursday, August 20, 1998 109th year, No. 94

GOP drafts lobbyists for help in crucial races

Senate chief reputedly warns them not to raise funds for Democrats

By Chris Moeser
The Arizona Republic

Senate President Brenda Burns has assigned the state's most powerful lobbyists to raise money for specific candidates in races Republicans must win this fall to retain control of the Senate.

Burns also warned the lobbyists that they will suffer political retribution in the next session of the Legislature if they raise money for Democrats, according to sources.

The Arizona Republic obtained a memo that shows lobbyists were assigned to help raise money for GOP candidates Larry Nelson in Yuma, Darden Hamilton in Glendale, and Senate Majority Whip Gary Richardson in Tempe. All are considered vulnerable in this election.

Burns said coordinating lobbyists' fund-raising efforts was "absolutely appropriate."

But critics say the memo confirms what many voters suspected: that special interests have a stranglehold on the legislative process in Arizona.

"This is the smoking gun that reveals the quid pro quo of the current system," said Kaia Lenhart, political director of Arizonans for Clean Elections. The group is supporting a ballot measure that would provide public funding for state elections in exchange for strict limits on campaign contributions.

"Public officials should not be bought by the highest bidder. Arizonans want and deserve elections not auctions," Lenhart said.

The influence of lobbyists on the Arizona Legislature has been controversial since a law-enforcement probe in 1991, nicknamed AzScam, revealed that lawmakers had taken bribes from a lobbyist, actually a police agent, who wanted them to legalize gambling. Since then, citizen-inspired initiatives have attempted to curb the influence of lobbyists, with limited success, and bills to impose new limits on lobbyists' gifts and entertainment have been repeatedly turned down by lawmakers. The influence of lobbyists has been the subject of an occasional *Republic* series, "The Invisible Legislature," since 1996.

The goal of the Burns strategy, according to the memo and sources familiar with the discussions, was to name "champions" in the corps of corporate

lobbyists who could direct campaign donations from both lobbyists and political action committees from the industries they represent.

Campaign champions

In notes in the margin of the memo, someone wrote, "Need champion for each campaign."

Democrats are making a strong bid to pick up three seats in the state Senate, which would deadlock the chamber at 15-15. That would make it difficult for Burns to hang on to her power and could severely hamper the conservative agenda at the Capitol.

The three-page memo came from a meeting July 15 at Republican Party headquarters in Phoenix. It includes four columns of information. The first is titled "Industry" and contains a list of 13 major Arizona industries, such as agriculture, mining and real estate.

Under each entry is a handwritten list of lobbyists who represent those industries in contacting state lawmakers.

The next three columns are headed by the candidates' names. Two lobbyists' names were written in the corresponding boxes in the form, which was not completed in the version obtained by *The Republic*.

The meeting was attended by a number of high-profile lobbyists, including John Mangum, Wendy

Briggs, Jim Klinker, Connie Wilheim-Garcia, Chuck Coughlin, Sidney Hoff Hay and Mike Williams.

Burns, who made the pitch to lobbyists for their support at the meeting, said nothing out of the ordinary occurred. The point was not to get lobbyists involved in campaigns, but to reach the groups they represent.

The meeting was an opportunity to get the word out about the GOP candidates in those races, to let people know about their philosophies and ideals, and find people willing to help with the campaigns.

The idea was to provide industry officials with the information so they can match their own beliefs with candidates.

'Funnel' for hopefuls

It's "absolutely appropriate," Burns said, to "suggest to a lobbyist that they inform the people they represent who the candidates are." Burns said the purpose of the memo was to provide candidates a "funnel," that is, a way to tap information and resources at the beginning of a campaign without making "thousands of calls."

The lobbyist-coordinators named for each campaign, as suggested by the memo, would be a starting point for candidates.

And she added that the list is so encompassing – including everything from firefighters to farmers – that virtually all public interests were represented.

"It would actually be extremely difficult to find groups who were left out," Burns said. "Those groups represent the public.

"When you campaign, people choose who they're going to give their funding for the campaign that is closest to their philosophies. I make no apologies. There's absolutely nothing wrong with that. That's exactly what people should be doing. They need to be as informed as they can about the candidates, and the only way a candidate can get their message out is typically by things that cost money."

But according to several people familiar with the discussions, Burns' sales job included discouraging lobbyists from "hedging their bets" in the three races by giving money to other parties than the GOP, a common practice.

The message to lobbyists was that donations to Democrats would be remembered in next year's legislative session, according to one lobbyist, who characterized the meeting as receiving "marching orders."

"It was a subtle message, but it wasn't so subtle," said another source, who attended one of the discussions. "It was along the lines of, 'We need you guys to stand up for Republican candidate.'"

Stan Furman, Darden Hamilton's Democratic opponent in District 16, said several lobbyists have

told him that prominent Republicans have warned them that if they support Furman, "They can forget about then bills being heard next year."

According to another source familiar with the discussions, Burns was paraphrased as saying, "We've been very pro-business," and to keep it that way, "we need your help."

The source added, "What she's doing is exactly what a Democratic or Republican leader should be doing. . . . She's putting together an effort to helping candidates out."

Not like Burns

Dennis Burke, executive director of Arizona Common Cause, said he doubted the veracity of the claim that lobbyists were warned against giving to Democrats.

"It doesn't sound like Brenda Burns," he said, adding that she has a "good government reputation."

In fact, Burns said she doesn't remember encouraging lobbyists to avoid giving to Democrats. But she acknowledges the business angle.

"We are a pro-business Legislature. The message is, if you want this philosophy to prevail, support the candidates who hold those philosophical values," she said.

Burns added that she didn't put the July meeting together. Party officials arranged it, she said. But

state GOP chairman Mike Hellon said the party didn't sponsor the event, although he said retaining the three Senate seats is a top priority.

"I was not at that meeting. I know what you're talking about," Hellon said. "That was not something that we put together. That was done by the people themselves. I think the intent was to sort of go around the table of interested parties and say, 'These are races that are crucial. Who's interested in helping whom?'"

Hellon, like Burns, worried about the perception that the GOP's campaign efforts are too closely tied to lobbyists.

There are so many interests, Hellon said, "they basically neutralize each other." Everyone is at the table. As long as there is full disclosure about who is supporting whom, he added, it's fine.

'Get involved'

And that's one of the reasons for the meeting, he said. It gave competing interests a chance to sort out which candidates to back.

"We're not trying to control it through the party. We're saying, 'Here are our guys, for those of you interested in the election -- you know, get involved,'" Hellon said.

"As long as everyone participates, then I don't think you have inordinate influence on the part of one

select interest group or another. As long as everybody is involved, then they balance each other out."

Two of the three Republican candidates, Hamilton and Larry Nelson, said they were aware of party efforts to help them. Gary Richardson said he was getting a lot of assistance, but he wasn't aware of any specific aid.

Hamilton said Burns was being extremely helpful.

"I know there's an effort out there," he said. "As far as her strategy and how she picked people to pull the campaign and the lobbying effort together, I'm not clued into that.

"But when I meet with (lobbyists), it's clear they've talked with her. The rails have obviously been greased by the time I get there."

Nelson, of Yuma, said Burns had been very supportive, writing letters of endorsement to lobbyists and business leaders. But he said he's not heard of any heavy-handed "thou shalt support" approach.

But Nelson's District 5 opponent, former House member Herb Guenther, says he's convinced that some lobbyists are being persuaded to avoid his campaign.

"Some people have been a little timid to offer financial support and that might be one of the reasons." Guenther said of the GOP effort. "These are people who have historically contributed to me."

'Laid down the law'

Former Tempe Mayor Harry Mitchell, Richardson's opponent in District 27, said he had been warned by a lobbyist that Burns had "laid down the law" about contributing to the three Democrats.

That angers Sen. Chris Cummiskey, D-central Phoenix, who calls the efforts by Burns and others a blatant attempt to use the influence of special interests to win the election.

The result, Cummiskey says, is a Legislature in which lawmakers are beholden to groups that raise money for them.

"This is a snapshot of what's going on in these campaigns. It's a litany of lobbyists that are tapped to maintain the status quo," Cummiskey said. "In this case, it sounds like just about every primary interest that does business at the Capitol."

Not going to China

Burns responded that Democrats would do the same thing if they had the majority.

"I suspect they're doing all that they can in the minority," she said. "I know they are. You would expect them to."

She added a shot at the national Democratic party, which has been beset by a fund-raising scandal.

"By the way, we're not going to Red China," she said.

Burke says both parties live off lobbyists and special interest money. According to Arizona Common Cause, 80 percent of state campaign donations comes from lobbyists and their spouses.

"That's the amazing truth of Arizona politics. It's funded by lobbyists. They own the process," Burke said. "The party with the votes has the most to sell."

GOP ASSIGNS LOBBYISTS TO CANDIDATES

Republican leaders have coordinated lobbyists' money-raising efforts for GOP candidates in three Senate "swing" districts. According to this memo from a July 15 meeting at GOP headquarters, Senate President Brenda Burns assigned lobbyists to raise money for campaigns in Yuma, Glendale and Tempe by soliciting campaign donations from their clients and industry political action committees. One note in the margin reads, "Need champion for each candidate." The first page of the memo is reproduced below.

JULY 15, 1998, 7:30 A.M.
ARIZONA REPUBLICAN PARTY HEADQUARTERS

[Handwritten Notes Omitted In Printing]

INDUSTRY	Larry Nelson District 5	Darden Hamilton Dist. 16	Gary Richardson Dist. 27
AGRICULTURE:			
CONSTRUCTION:			

FINANCIAL:			
HEALTHCARE:			

Following is a printed version of the handwritten notes in all three pages of the memo:

Agriculture
Bob Fannin
Jim Klinker
David Iwanski
(Agribusiness)
Rick Lavis
Bas Aja

Construction
Bob Fannin/Jeff
Connie Wilhelm
Janice Burnett
Mike Williams

Financial
Kevin DeMenna
Ellen Poole
Skruggs
American Express
(Charlie) Stevens

Health Care
Laurie Lange
Greg MacFarland
John Mangum
Don Isaacson
Bob Fannin
David Landrith
Rip Wilson

Hi-tech/Manufacturing
Bob Fannin
Michael Preston Green
Knox Kimberly
Allan Stanton
Me

Hospitality
Ed Wren
Bob (Fannin)
Wendy (Briggs)/Jeff
Michael Preston Green
Don Isaacson
Phil MacDonnel
Mike Williams
unknown

Insurance
Wendy (Briggs)
Steve Barclay
Bob/Wendy
Michael Preston Green
Don Isaacson
Dave Childers

Mining
Chuck Shipley
Kevin Kinsall
Jim Bush

Kevin DeMenna
unknown

Real Estate
Tom Farley
Larry Landry
Suzanne Gilstrap

Retail
Michelle Ahlmer
John Mangum
Mike Williams
Larry Landry

Transportation
Michael Preston Green
Dave Barry
Larry Richmond/
auto dealers
Terry Smalley
Web Crockett
Allan Stanton
C.A. Howlett

Utilities
Joe Abate
Manny (Lerma)
Russell (Smolden)
Susan Bitter Smith
Richard Foreman
Don Isaacson
Marty (Schultz)
Knox Kimberly
Jim Hartdegen
illegible

Other:
Sidney Hoff Hay
Samantha Fern
Cathy Herrod
Small business
Tom Guerrin
Chambers

Public Safety
Firefighters
Police
Don Isaacson
Elaine Arena
Jim Skelly
Ed Wren

Oil Companies
Jim Bush
Mike Williams
Charlie Stevens

Professional
CPA
Doctors
Attorneys
Funeral
Dentists
DeMenna
Charlie (Stevens
Wendy (Briggs)
Jeff Hill
(John) Mangum
Paul Messenger
unknown

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

1998
BALLOT
PROPOSITIONS

Vote Arizona!
1-877-THE VOTE
(1-877-843-8683)
Toll-free Voter Registration Hotline

GENERAL ELECTION
NOVEMBER 3, 1998

PUBLISHED BY
BETSEY BAYLESS
ARIZONA SECRETARY OF STATE

* * *

Where does the money come from? Why should you be concerned? Because important issues regarding health care, children, and the environment are affected by political contributions. Health care industry interests opposed to new standards for patient care have stepped up their political giving. Drugs cost more because of campaign contributions from the pharmaceutical industry. School construction is obstructed because legislators yield to the bonding industry.

Most corporations and wealthy donors give money because they expect something in return. Elected officals who consistently vote against the interests of their donors will see future contributions significantly reduced.

You can end the money chase, halt corruption, limit campaign spending and reduce special interest influence by supporting "Clean Elections." The League of Women Voters of Arizona urges you to vote yes on the "Clean Election Act."

Dr. Lila J. Schwartz,
President
Leauge of Women
Voters of Arizona
Sun City West

Ann Eschinger, President
League of Women Voters
of Metropolitan Phoenix
Phoenix

Paid for by League of Women Voters of Metro Phoenix; Ann Eschinger, President

ARGUMENT "FOR" PROPOSITION 200

As an active member of our community, I have witnessed Arizona thrive economically over the past three decades. During these years every segment of our society has been participating in Arizona's growing reputation nationally as a good place to raise a family, pursue a career, and participate in the community.

However, after years of grass roots support for local, state, and national political candidates of both parties, I have noticed an alarming trend which if not stopped will destroy democracy as we know it. The culprit is the insatiable pursuit of private political contributions by candidates for office. With the demand for big money so acute, powerful contributors

lock up the attention of their candidates, and at worst influence public policy.

It is time to stop our politcians' addiction to huge privately funded campaigns. Our politicians should be free again to represent the best interests of all the citizens, not just the large financial contributors who can trade their cash for political support. When we return Arizona's politicians to the competition of ideals and not money we will reset the foundation of democracy in Arizona.

The Citizens' Clean Elections Act is the right step to clean up Arizona politics. It frees the politicians from the money chase, ends the relentless pursuit from big money, and allows more Arizonans the opportunity to serve in public office. Simply stated, it levels the playing field and stops corruption. Only those who have been stealing our politicians' independence with big money could oppose the Clean Elections Act. I urge you, for the future of Arizona, to vote yes for Clean Elections.

John Benton
Tempe

* * *

The Citizens Clean Election Act – endorsed by the State Legislative Council of AARP, Arizona League of Women Voters and countless other organizations, will take big money out of politics and reduce special interest influence. By limiting campaign spending and increasing disclosure requirements, it will level

the playing field so that the voices of Arizona's working families and seniors on fixed incomes are heard just as loudly as the big money donors who are corrupting our system.

Join me in voting "YES" on Proposition 200. Let's clean-up Arizona politics.

John Eichenauer
Phoenix

Paid for by Arizonans for Clean Elections; Gary Tredway, Treasurer

ARGUMENT "FOR" PROPOSITION 200

Argument for Proposition 200 (Arizonans for Clean Elections)

As members of the organization responsible for many of Arizona's existing campaign spending limits and lobbyist reforms, and as an organization that works every day in the Legislature and sees the pervasive and corrosive effects of lobbyist money in political campaigns, we believe that Proposition 200 is the the strong medicine needed in the Arizona Legislature. It provides a sensible way to reduce the role of special interest money, ratchet-down the expense of political campaigns, enable good, new people from our communities to run against lobbyist-funded candidates, enable elected leaders to stop the money chase altogether and spend more time on the hard issues, and provide Arizonans with more timely disclosure regarding who is receiving special interest money.

Arizona Common Cause volunteers strongly support Proposition 200 and urge you to vote "YES."

Rod Engelen, State Chairman
Common Cause of Arizona
Phoenix

* * *

Spelling, grammar, and punctuation were reproduced exactly as submitted in the "for" and "against" arguments.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

BEFORE THE OFFICE OF
ADMINISTRATIVE HEARINGS

In the Matter of JOAN FITZ-RANDOLPH ID # 2000-91625 and JAY BLANCHARD ID # 2000-91559	01F-001-CCE 01F-002-CCE **MEMORANDUM OF THE CITIZENS CLEAN ELECTIONS COMMISSION**

This matter is a consolidation of two separate, but related matters regarding matching funds for Clean Elections Candidates. The Citizens Clean Elections Commission ("Commission") incorporates by reference the Statement of Agreed Facts filed separately by the parties in this matter.

Mr. Randolph requests that he receive matching funds for contributions received by his opponent Jeff Groscost, even though those contributions have been returned to donor. Ms. Fitz-Randolph seeks matching funds for a large amount of money that was transferred by her opponent, Steve May, to his 2002 account. In both cases, the Commission determined that

because those donations were no longer a part of the candidate's 2002 account, that no matching funds would be distributed. This determination was based on the Commission's interpretation of their legal obligations, the purpose of the Citizens Clean Elections Administrative [illegible]. To count such offsets in this case would be contrary to the procedures used by a [illegible] of state contributions returned do not count towards contributions [illegible] and contrary to the purposes of the act. Simply put, why should participating candidates be able to spend money that their opponents do not have available to them?

The statute must be construed in accordance with the purposes of the act. The Appellants' reading of the Act would lead to an absurd result. Jay Blanchard would receive $5,516 that his opponent does not have available to spend. Ms. Fitz-Randolph would receive approximately $15,000 that her opponent does not have available.

In *Waltz v. Arizona Dep't of Public Safety*, the Arizona Court of Appeals said:

> In interpreting a statute, "legislative intent is controlling" and "pragmatic construction is required if a technical construction would lead to absurdity." [cite omitted].

> If, however, a liberal application of the language [of a statute] leads to a result which produces an absurdity, it is our duty to construe the act, if possible, so that it is a reasonable and workable law, not inconsistent with the general policy of the legislature, even though in doing so we may be compelled to change the punctuation or even the precise language of the act. [Citations omitted].

120 Ariz. 591, 594-594, 826 P.2d 1217, 1220-1221 (App. 1991). See also, State v. Walker, 181 Ariz. 475, 480, 891 P.2d 942, 947 (App. 1995) (statute should not be interpreted to result in absurdities).

As the Act was passed into law through an initiative of the People, there is no "legislative history" to look to in order to determine legislative intent. However, in construing an initiative, the Court looks to "ballot materials and publicity pamphlets circulated in support of the initiative." *Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 984, 993 (1998). The primary informational pamphlet distributed by proponents of the initiative, Arizonans for Clean Elections, is attached as Exhibit B. That pamphlet reflects public concerns and a desire to "level the playing field for candidates and voters. It enables people without access to wealth to run for office waging a battle of ideas rather than bank accounts." The pamphlet also describes when matching funds should kick in.

> Matching funds, up to three times the original amount, are provided *if the participating candidate is outspent by non participating*

> *opponents*. With this provision, Clean Elections candidates will have the resources to get their message out and run credible campaigns.
>
> Pamphlet, page 2 (emphasis added).

The purpose behind the act is clear. Clean elections candidates should have equal opportunity to get their message out. If non-participating opponents spend money in the political battle, the Act is intended to give the participating candidate an opportunity to respond. The requirements of 16-952(B) are not applicable to a situation where a candidate returns contributions or moves money into another account. If disbursements with no impact on the non-participating candidate's race are not counted for matching purposes, the purpose of the Act is fulfilled. A.R.S. §16-952 can be read to require matching funds when contributions *subject to use by an opponent* are in the account during the general election period. Such a construction of the statute is consistent with the purposes of the Act (in providing matching funds) and avoids an absurd result in which the participating candidate has more to spend than the non participating candidate.

Given the Act's stated objective of leveling the playing field and equalizing spending, finding that A.R.S. § 16-952(B) requires payment in all circumstances would deprive the Act's other provisions of their due effect. Moreover, Plaintiff's reliance on the

word "shall" in the language of the statute is not dispositive.

> Use of the word 'shall' does not automatically render a statute mandatory; 'shall' may indicate desirability, preference or permission. *Arizona Downs v. Arizona Horsemen's Found.*, 130 Ariz. 550, 554 (1981). As a general rule, if a statute 'states the time for performance of an official duty,' without any language denying performance after a specified time, it is directory [as opposed to mandatory].

Forino v. Arizona Dept. of Transp., 952 P.2d 315, 319 (App. 1998). In the instant case, the purpose of the word "shall" is directive as to time. A.R.S. § 16-952(B) specifies that when a participating candidate qualifies for matching funds, " . . . the commission shall immediately pay . . . ".

[illegible] is hot" and raise as much money as possible right now. His decision to raise money for [illegible] 2002 campaign should not result in a windfall to Ms. Fitz-Randolph.

The money transferred to the 2002 account is entirely unavailable to Mr. May because Commission rules bar him from using more than one account for the current campaign. R2-20-103(A). Mr. May has acknowledged the implication and application of that rule in his case. He cannot move funds from the 2002 account back to the 2000 account. Thus, for purposes of this election, that money is entirely unavailable to him. If the money transferred to Mr. May's 2002

account is included for purposes of matching funds, Ms. Fitz-Randolph will be able to spend much more than her opponent. That would be unfair to Mr. May and contrary to the "equalizing of spending" purposes of the Act.

Conclusion

It can not be disputed that the purpose of the Citizens Clean Elections Act is to equalize the playing field and give participating candidates equal opportunity to get their message out. Although the Appellants are participating candidates, they appear to have forgotten this principle. Instead, they demand that they be given "matching funds" for monies that their opponents do not have available for use this campaign. This argument would lead to an absurd result whereby the participating candidates will be able to outspend their opponent. Rules of statutory construction require that the intent of the act be read into the statutes. By not counting funds which are either returned or transferred to another account towards total contributions for purposes of matching funds, the Commission has clearly fulfilled the purpose of the Act. Thus, the Appellants' demand for addition funds should be denied.

For the Reasons set forth above, the Citizens Clean Elections Commission requests that the Appellants' claims be denied.

RESPECTFULLY SUBMITTED this 27th day of October, 2000.

Janet Napolitano
Attorney General

By: /s/ Todd F. Lang
Todd F. Lang
Assistant Attorney General
Attorney for Citizens Clean
Elections Commission

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of JOAN FITZ-RANDOLPH, ID # 2000-91625 Appellant	No. 01F-001-CCE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE
In the Matter of JAY BLANCHARD, ID # 2000-91559 Appellant	No. 01F-002-CCE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE

HEARING: October 27, 2000

APPEARANCES: David W. Eagle, Esq., represented Appellants Joan Fitz-Randolph and Jay Blanchard. Assistant Attorney General Todd F. Lang represented the Citizens Clean Elections Commission.

ADMINISTRATIVE LAW JUDGE: Daniel G. Martin.

Political candidates Joan Fitz-Randolph and Jay Blanchard opposed two separate decisions by the Citizens Clean Elections Commission (the "Commission") regarding payment of matching funds under the Citizens Clean Elections Act, A.R.S. § 16-940 et seq. (the "Act"). Prior to hearing, the parties submitted legal briefs and a Statement of Agreed Facts

(incorporated herein with minor modifications). The parties also stipulated to the admission of exhibits. In light of the foregoing, the hearing was limited to legal argument. Having considered the record and the arguments of the parties the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law and Recommended Orders.

* * *

the Act to allow Ms. Fitz-Randolph the benefit of equalizing funds based on this money. The Commission asserts that to construe the Act to allow Ms. Fitz-Randolph the benefit of equalizing funds based on money no longer available to her opponent would violate Arizona's rules of statutory construction because it would produce an "absurd" result.[1]

24. A.R.S. § 16-940 sets forth detailed "findings and declarations" in support of the Act. There is no direct declaration that the Act's purpose is, as urged by the Commission, to "level the playing field." A.R.S. § 16-940(A) states:

> The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will

---

[1] In support of this argument, the Commission cites *Waltz v. Arizona Dep't of Public Safety*, 120 Ariz. 581, 584-85, 826 P.2d 1217, 1220-21 (Ct. App. 1991) and *State v. Walker*, 181 Ariz. 475, 480, 891 P.2d 942, 947 (Ct. App. 1985).

> promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

25. Although the Act does not directly state that one of its purposes is to "level the playing field," the Administrative Law Judge finds that this intent can be inferred from several sources. First, one of the Act's primary objectives is to provide funding to participating candidates. To the extent that such funding is dependent, as it is under A.R.S. § 16-952(B), on contributions raised by the participating candidate's opponent, there can be little question that the Act functions to "level the playing field." Second, informational literature that was distributed by the Act's proponents when it was an initiative measure (Exhibit B) plainly states that one of the Act's purposes is to "level the playing field for candidates and voters. It enables people without access to wealth to run for office waging a battle of ideas rather than bank accounts."

26. The only authority cited by the Commission in support of its position that Mr. May no longer had use of the money that he transferred to his 2002 Exploratory account is Arizona Administrative Code ("A.A.C.") R2-20-103(A). This rule requires

* * *

RECOMMENDED ORDERS

In view of the foregoing, it is recommended that the Citizens Clean Elections Commission enter the following orders

1. With respect to Joan Fitz-Randolph, Docket No. 01F-001-CCE, the Commission shall authorize payment to Ms. Fitz-Randolph under A.R.S. § 16-952(B) of equalizing funds in an amount equal to the amount restricted to bring Ms. Fitz-Randolph up to the $45,000.00 general election cap.

2. With respect to Jay Blanchard, Docket No. 01F-002-CCE, the Commission shall include in its calculation of Mr. Groscost's total contributions under A.R.S. § 16-952(B) the amount of $5516.00 in returned contributions that the Commission had previously elected to offer.

Done this day, October 31, 2000.

/s/ Daniel G. Martin
Daniel G. Martin
Administrative Law Judge

Original transcribed by fax and mail this 31st day of October, 2000, to:

Colleen Connor, Executive Director
Citizens Clean Elections Commission
ATTN: Paula Ortz
[illegible]001 North 3rd Street, Suite 200
Phoenix, Arizona 55012

By /s/ [Illegible]

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

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The Associated Press State & Local Wire

September 26, 2002, Thursday, BC cycle

SECTION: Political News

LENGTH: 494 words

HEADLINE: Bush to stump for fellow Republicans in Arizona

BYLINE: By MICHELLE RUSHLO, Associated Press Writer

DATELINE: PHOENIX

BODY:

The Republican candidates in two high-profile and hotly contested Arizona races said they're hoping President Bush's visit Friday will propel them past their opponents.

Bush will stop first for a midday rally in Flagstaff, where organizers hope thousands will turn out to welcome the president and to support gubernatorial candidate Matt Salmon and congressional candidate Rick Renzi. Bush is then scheduled to

speak in Phoenix at a $700-a-plate fund-raising dinner for Salmon.

Both Salmon and Renzi, the Republican nominee for the 1st District congressional seat, hope Bush's endorsement will help them break away from their respective opponents.

"It's a huge boost to our campaign efforts," Renzi spokesman Joe Galli said Thursday. At the Flagstaff rally, "we'd anticipate that he's going to give a real rousing speech on behalf of our Republican candidates."

Nationally, Republicans and Democrats are closely watching Renzi's neck-and-neck race against Democrat George Cordova. The 1st District, one of two new seats in Arizona this year, covers a vast section of the state, including the Grand Canyon, Flagstaff, the Navajo Reservation and Casa Grande. Statistically, the district gives Democrats a slight edge, but a recent poll showed the two candidates virtually tied.

The same is true of Salmon and Democratic gubernatorial contender Janet Napolitano. Supporters hope Bush's visit will help tip the scales in Salmon's favor.

"It's the biggest shot in the arm a candidate can ever get to have the leader of the free world come in and endorse his candidacy," Salmon said in an interview.

His spokeswoman, Camilla Strongin, said that in addition to the endorsement, Bush's visit will provide Salmon with an opportunity to discuss a number of issues with the president, including a guest worker program and the state's budget issues.

Salmon is scheduled to introduce Bush at the rally in Flagstaff and then to fly back to Phoenix for the fund-raiser on Air Force One, Strongin said.

She said the financial benefit of Bush's visit is really secondary to the endorsement and strengthened relationship with the president.

The financial windfall from the fund-raiser could be significant, however. About 1,500 tickets had been sold by Thursday, grossing the party and Salmon more than $1 million. Even once expenses are deducted, the proceeds should be substantial.

Because of the way Arizona's Clean Elections laws work, Napolitano's campaign also stands to benefit from the Republican fund raiser. Because Napolitano opted for a publicly funded campaign, she'll receive matching dollars for every dollar Salmon raises up to $400,000.

"I'm not sure the president realizes he's raising money for both candidates," said Napolitano spokeswoman Kris Mayes, who referred to the dinner as a "dual fund-raiser."

On the Net:

Napolitano campaign: http://www.gojanet.org

Salmon campaign: http://www.salmonforgovernor.com/

LOAD-DATE: September 27, 2002

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

The Road to Victory

Clean Elections Shapes 2002 Arizona Elections

An Executive Summary Report by The Clean Elections Institute December 2002

This report is available online at www.azclean.org

The Clean Elections Institute, Inc.
2001 N. 3rd St., #210
Phoenix, AZ 85004
602.840.6633 phone
602.840.2236 fax
www.azclean.org

Mission of the Clean Elections Institute

The Clean Elections Institute encourages participation in the electoral process and seeks to build confidence in democratic institutions.

The Clean Elections Institute is a nonprofit advocacy organization dedicated to promoting, enhancing and defending Arizona's unique Clean Elections law passed by the voters in 1998. The Clean Elections Institute is privately financed and operates solely on the charitable donations of foundations and individuals.

The Institute wishes to thank its generous donors and supporters, specifically the foundations dedicated to the mission of the Clean Elections Institute.

ARCA Foundation
Arizona Social Change Fund
Deer Creek Foundation
Common Cause
Lodestar Foundation
McKay Foundation
Northeast Action Implementation Project
Open Society Institute
Piper Foundation
Public Campaign
Solidago Foundation
Stern Family Fund
Threshold Foundation

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Executive Summary

Arizona's Clean Elections system celebrated a clear victory in 2002 electing the first ever publicly financed governor in addition to 38 other clean candidates. Seven of nine (78%) statewide officers were elected as Clean Elections candidates using public funds, a clear reflection of Arizona Republic poll

results showing that 64 percent of Arizona voters support the Clean Elections system.

Arizonans elected their first ever Clean Elections Governor, Secretary of State, Attorney General, Treasurer, and Mine Inspector in addition to a Corporation Commission with four of five Clean Elections commissioners. In addition, 27 members of the Arizona House of Representatives and 5 members of the Arizona Senate were elected as Clean Elections candidates.

Arizonans demonstrated tremendous insight and leadership by passing election reforms in 1998 to restore integrity to the electoral process and give voters the power to create honest, representative government. The 1998 passage of Clean Elections and its successful implementation in the 2000 and 2002 elections exhibit that such reform measures empower Arizona voters and expand their choices.

Arizonans promoted and passed the Clean Elections law to increase participation in the electoral process, reduce the influence of big money in campaigns and government, and increase competition among candidates, all of which worked to make 2002 the most competitive election season in Arizona history.

Clean Elections worked to increase Participation in the electoral process, reduce the influence of big money in campaigns and increase competition among candidates.

The Clean Elections system increased voter education through public debates and the delivery of a voter information pamphlet to every Arizona registered-voter household. The Clean Elections system also gave community leaders the opportunity to stand for election without assistance from deep pocket contributors and special interests. For the first time, Arizona elections had more competition among candidates, more choices for voters and an open political climate where constituents mattered more than lobbyists' checkbooks.

Candidate participation increased 23 percent in the primary and 21 percent in the general elections since 1998, the last year in which all statewide and legislative offices were open to election. The number of contested races increased, particularly in the senate when only 10 races were contested in 1998 and 21 were contested in 2002. Competition for statewide races also rose from 14 general election candidates in 1998 to 23 statewide candidates in 2002, a 64 percent increase in just one election cycle.

When the Clean Elections system was first implemented in 2000, 59 candidates sought office as Clean Elections candidates. Just two years later in 2002,

participation rose by 140 percent to 139 Clean Elections candidates. The increased number of candidates and opportunities for increased citizen involvement provided more voters with the opportunity to support candidates through the minimal ($5) qualifying contribution, with more than 90,000 $5 contributions collected from Arizona voters. Voters also continually express their support for Clean Elections in statewide polls with 80 percent indicating that political contributions influence voting patterns (Behavior Research Center, December 2001) and 66 percent supporting the Clean Elections system (KAET, June 2002).

The Clean Elections system proved to be a popular option for candidates. More than 57 percent (139 of 247) of all candidates participated in Clean Elections, up from 30 percent in 2000. Participation in statewide races also increased to 70 percent. In the governor's race, all but two candidates chose to run as Clean Elections candidates. In the State Legislature, 54 percent of all candidates (113 of 208) ran Clean. The Clean Elections Fund distributed $12.8 million to participating candidates, which allowed all 139 participating candidates to run competitive races for their respective offices.

Arizona's Clean Elections law garnered support from across the country with U.S. Senator John McCain and Arizona Corporation Commissioner Marc Spitzer indicating their support in a public education advertising campaign funded by the Clean Elections Institute in June 2002. In addition, the Arizona Supreme Court upheld the constitutionality of the law's

funding further blocking opposition attempts to undermine Arizona's voter-approved Clean Elections system.

More than 400 Arizona organizations and individuals have lent their public support and endorsement to Arizona's Clean Elections system; and support continues to grow. Clean Elections is a major step forward. As with any new major, systemic change, there are adjustments needed including minor changes to reporting requirements, adjustments to matching funds provisions, changing some certification guidelines, and increasing candidate and candidate staff education regarding campaign law implementation.

History of the Arizona Clean Elections System

The voter-approved Citizens Clean Elections Act (CCEA) of 1998 was an innovative, groundbreaking aspect of the campaign finance reform movement in America. In fact, Arizona is one of only four states with full public financing of statewide elections. The Act gives political candidates the choice to run "clean" with public funds or to run with private contributions.

The passage of this Act was a direct response based on voter disdain for Arizona's corrupt political history, particularly the influence of special-interest money in political campaigns. In the recent past, Arizonans impeached a Governor, witnessed a major legislative scandal, saw a Governor resign over financial improprieties, and had a two U.S. Senators caught up in

the financial Savings and Loan Scandal surrounding Charles Keating.

The CCEA provides a proscribed amount of public funding to qualified candidates who agree to contribution limits and to raise very limited private money. Candidates qualify by demonstrating broad public support within their specific election districts. Participating candidates must raise a substantial number of $5 qualifying contributions in a limited period of time from Arizona voters only. For those who choose not to participate in this voluntary program and use what has been the traditional campaign finance system, no limits are imposed on the total funds a candidate may raise from private donors, however the amount of individual donations does have a limit. Matching funds are available to Clean Elections candidates to ensure that a participating candidate's campaign is funded proportionately to their non-participating opponent, up to certain preset limits.

State Senator Joe Eddie Lopez first introduced Arizona's Clean Elections law in the 1996 Senate. The bill was ignored by legislators and never afforded a proper hearing. The good-government coalition pushing for the law then turned to the Initiative process and formed the *Arizonans for Clean Elections Committee*. This committee consisted of individuals and organizations including the League of Women Voters, Common Cause, Arizona Citizen Action and Public Campaign.

Increases Competition and Voter Choice

Voters passed the Clean Elections Act in November 1998 and candidates first participated in the Clean Elections system in November 2000.

Arizonans passed the Clean Elections Act in 1998 to increase participation in the electoral process, reduce the influence of big money in campaigns, and increase competition among candidates.

Candidate participation increased 24 percent in the primary and 13 percent in the general since 1998 before Clean Elections was implemented.

In the 2002 election cycle, when compared to the 1998 election year when all statewide and legislative offices were last up for election, candidate participation increased 23 percent in the primary (199 candidates in 1998 vs. 247 candidates in 2002) and 21 percent in the general election (150 candidates in 1998 vs. 170 candidates in 2002).

Competition among candidates also increased since 1998 when only 10 State Senate races were contested while 21 were contested in 2002. Competition for statewide offices increased 64 percent in four years from 14 general elections candidates in 1998 to 23 statewide candidates in 2002.

In the primary elections, Clean Elections funding increased competition among candidates and provided

more choices for voters. Many Arizona races are determined in the primary due to a district map with a majority of districts considerably favored by one-party. In addition, overall voter registration and voting trends favoring men and Republicans have, in previous election years, discouraged Democrats, Independents and women from running for office because a lack of money kept them from running competitive races. Clean Elections changed this and in 2002 more candidates of all parties, both men and women, ran for office.

Recent primary election trends indicate that women and Democrats who participated in Clean Elections were much more successful in winning their primary elections than their general elections. The increased ability of women and Democrats to survive the primary clearly indicates that Clean Elections increased competition in primary elections and also allowed these viable candidates to participate in the general election.

After a 2000 election in which 59 candidates participated in Clean Elections, the popularity of the Clean Elections system skyrocketed with candidates and voters in 2002. Participation increased by 2.5 times that of the previous election to 139 total Clean Elections candidates. Increased involvement also provided more voters with the opportunity to support candidates through $5 qualifying contribution with more than 90,000 such contributions made in 2002 by Arizona voters.

Increase in number of candidates from 1998 to 2002

	Primary – all offices	General – all offices	Primary – statewide	Primary – legislative	General – statewide	General – legislative
1998	199	150	27	172	14	136
2002	247	170	39	208	23	147
Increase #	48	20	12	36	9	11
Increase %	24%	13%	44%	21%	64%	9%

Increase in candidates participating in Clean Elections

	Legislative		All-Primary		All-General	
	Total	CE	Total	CE		CE
2000	216	54	223	59	154	44
2002	208	113	247	139	170	89
Increase #	-8	59	24	80	16	45
Increase %	-4%	117%	11%	140%	10%	100%

Candidates Receive Adequate Resources

During the 2002 elections, 55% of all statewide and legislative candidates participated in the Clean Elections system. Among only Republican and Democratic statewide and legislative candidates, 70% participated in the Clean Elections system. Only one major party (Republican) gubernatorial candidate chose to run his campaign outside the Clean Elections system. However, even that one candidate understood the value of the Clean Elections system and took advantage of and participated in the statewide Clean Elections Voter Guide and Clean Elections sponsored public debates.

When Arizonans passed the law in 1998, they took into consideration spending limits to reduce the high cost of running campaigns. Spending limits open the door for new candidates to participate who otherwise could not have afforded the high cost of opposing an incumbent who traditionally has access to large amounts of money. In addition, the Clean Elections system provides for adequate resources that make it appealing for many incumbents to forgo traditional financing in favor of Clean Elections.

As more candidates are able to free themselves from long-time ties to entrenched funding, the number of candidates participating in the Clean Elections system will continue to increase.

The CCEC disburses funds to Clean Elections candidates who gather the necessary petition signatures and $5-qualifying contributions from Arizona voters.

During the 2002 elections, the CCEC disbursed $12.8 million to Clean Elections candidates.

Matching Funds

To combat the inequalities that exist with disproportionate funding, when a nonparticipating candidate outspends his Clean Elections participating opponent, the CCEC provides the Clean Elections candidate with matching funds up to a preset limit. Clean Elections candidates can receive as much as three times their original disbursement in matching funds. Matching funds are triggered through a timely review of reports filed by the non-participating candidate that allows the CCEC to effectively calculate the amount of funds spent by the non-participating candidate.

	Candidates who received matching funds in the primary	**Candidates who were matched and won their primaries**
Statewide	**5**	**1**
Senate	**7**	**2**
House	**23**	**9**
Total	**35**	**12**

The CCEC calculates matching funds based upon spending during the primary election and based upon actual campaign account deposits during the general election cycle. In addition, the CCEC matches funds

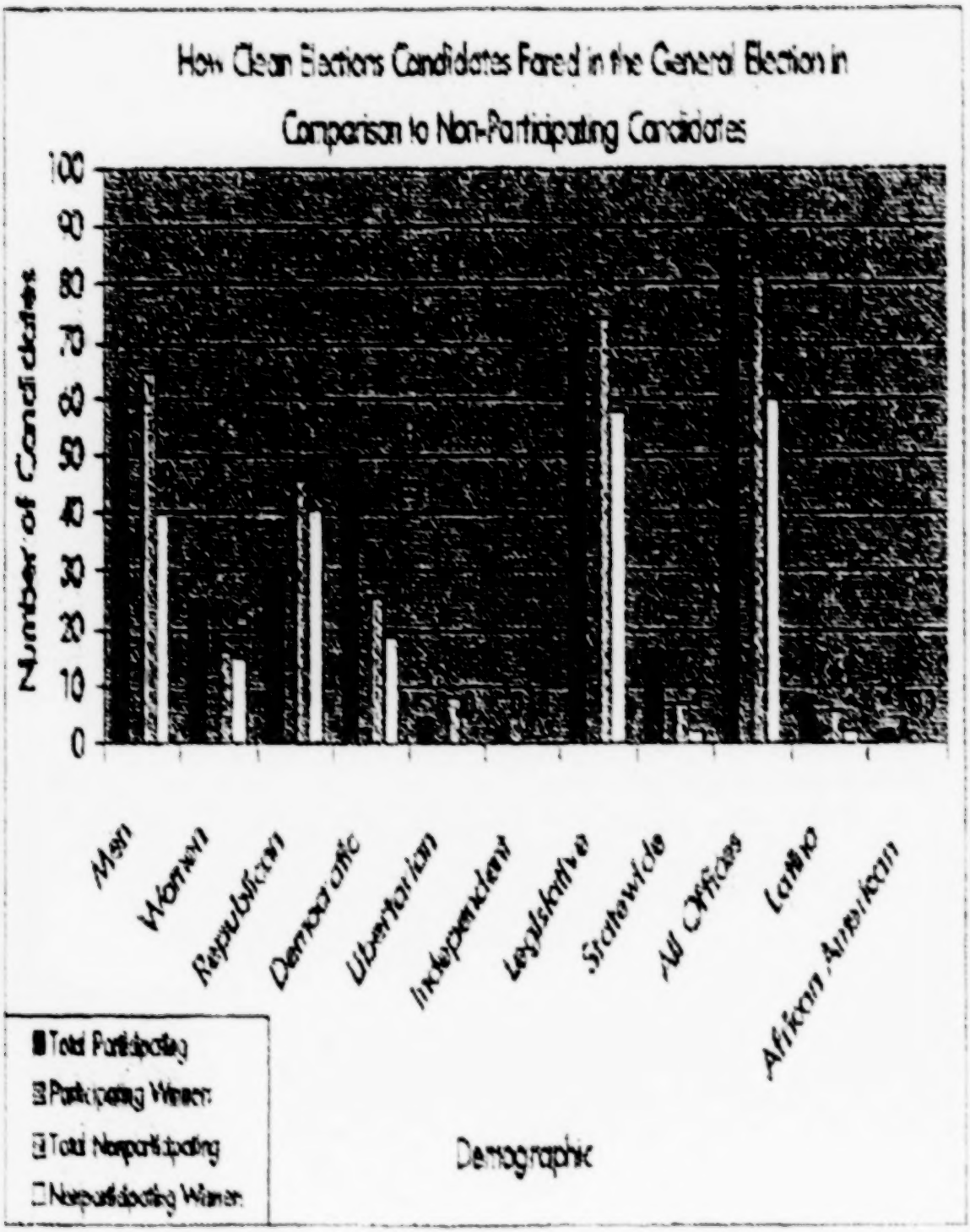
to participating candidates based upon independent expenditures that target participating candidates. During the 2002 elections, 77 clean Elections candidates received matching funds.

The 2002 Elections provided voters with more choices. In addition, Clean Elections funding ensured that in nearly all races campaign funds were equalized or comparable allowing all candidates to effectively reach voters with their messages.

Overall participation in Clean Elections stood at 56 percent for the 2002 primary election and held at 52 percent for the general election. Of the 99 Arizona general election races and more than 200 primary election races, disproportionate funding was a factor in only five primary races and two general election races. In one of those races, the Clean Elections candidate won against a primary opponent who spent more than twice the campaign funds, clearly demonstrating that unlimited money is not necessary to win, but adequate funding is.

The Citizens Clean Elections Commission disbursed $7.4 million to Clean Elections candidates for use in primary campaigns. Of this, $2 million were matching funds over and above the base amount disbursed to candidates whose opponents used traditional financing and outspent the initial Clean Elections disbursements of their Clean Elections opponents. In races where candidates received matching funds, a Clean Elections candidate won 34 percent of the time, or 12 of 28 races.

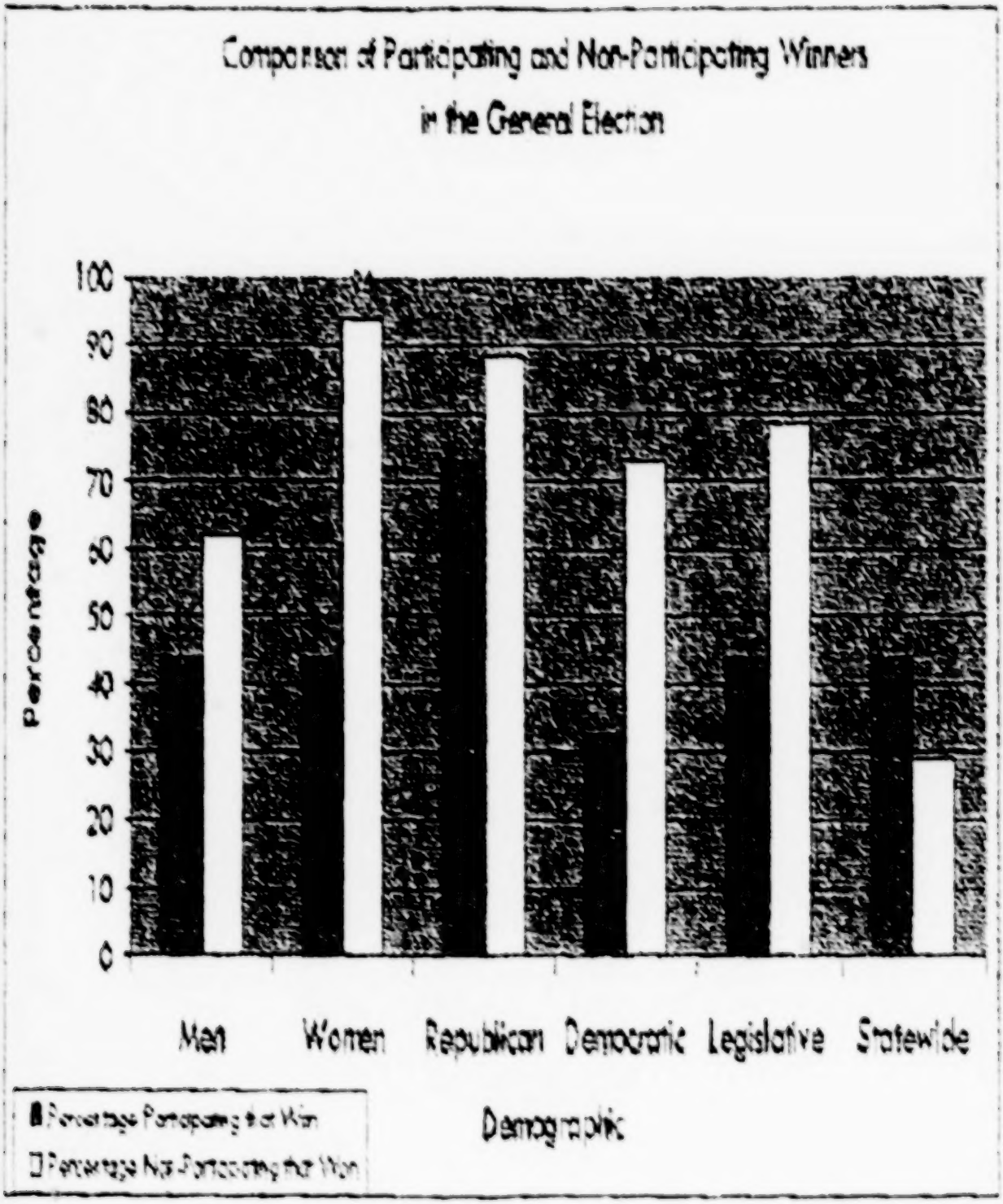
One interesting note: In the primary elections, it appears women and Democrats faired better than Republicans who participated in Clean Elections. This outcome may not have anything to do with participation in the Clean Elections system since in some Republican legislative primaries as many as four Clean Elections Republican candidates competed for just two available nominations. In these races, it was only possible for 50 percent of the participating candidates to win.


How Clean Elections Candidates Fared in the General Election in Comparison to Non-Participating Candidates
Number of Candidates
0
10
Men
Women
Republican
Democratic
Libertarian
Independent
Legislative
Statewide
All Offices
Latino
African American
Total Participating
Participating Women
Total Nonparticipating
Nonparticipating Women
Demographic

Clean Elections candidates were provided the financial resources to run competitive campaigns. The number of Clean Elections candidates who won their races clearly indicates they had adequate funding to build name recognition and reach Arizona voters.

In the general election, men and Republicans who participated in Clean Elections won more often than other Clean Elections candidates. Seventy-three percent of all Republicans participating in Clean Elections won their general election races compared to 31 percent of participating Democrats. This is likely due to the Republican voter registration and turnout advantage and follows the overall trend of the 2002 elections, which saw considerably more Republicans elected to office across the nation.

General Election trends were similar to primary election trends in that a higher percentage of non-participating Clean Elections candidates won in both the primary and general elections. However, when it came to statewide offices, Arizonans overwhelmingly favored Clean Elections participating candidates. Republicans as well as men fared better across the state regardless of whether they participated in the Clean Elections system.


Comparison of Participating and Non-Participating Winners
in the General Election
Percentage
100
90
80
70
60
50
40
30
20
10
0
Men
Women
Republican
Democratic
Legislative
Statewide
Demographic

Reduces Special Interest Influence Increases Voter Participation

In 1998, lawyers and lobbyists were the largest contributors to Arizona candidate campaigns aside from candidate or political party contributions. As an industry, lawyers and lobbyists gave $1.43 million to candidate campaigns, and they did not discriminate between candidates by political affiliation, geographic location or voting history for incumbents. In fact, lawyers and lobbyists often contributed to more than 40 candidates each with clear favoritism for incumbents.

As with all campaigns, money played a major role in the 1998 Arizona campaigns with 79 percent of the candidates with the largest campaign war chests winning their races. However, after the implementation of the Clean Elections system, this was true for only two percent of candidates in the 2002 elections. In just four years, Arizona politics changed dramatically creating a 75 percent reduction in the number of races determined by money.

In 1998, winners raised 55 percent more money than losers. Only one candidate lost despite having more money than his opponent. Incumbents won 95 percent of their races (only 3 of 63 lost) and raised nearly twice as much as their challengers. In the 2002 primary, 14 of 58 incumbents (24 percent) lost to their challengers and of the 14 losers, three had more money than their opponents, two had less money and in all other races funds were essentially equal.

In 2002, Clean Elections afforded candidates without access to special interest money to run competitive races. Forty percent of Clean Elections candidates won their general election races and 58 percent won their primary races. While Clean Elections is not able to overcome all disparities, the access to public funds allowed good candidates to run competitive races and win.

Voter support of Clean Elections candidates resulted in seven of nine statewide offices being won by candidates participating in the Clean Elections system and a total of 39 such candidates were elected in the 2002 election. The primary election results clearly indicate that voters are willing to consider and support Clean Elections candidates. Voters nominated Clean Elections candidates for 68 percent of the 99 available legislative and statewide offices.

Arizona Voters Become $5-Donors

Clean Elections reduced the influence of special interests in campaigns by providing an avenue for voters to support candidates without having to compete with the large checkbooks of special interests and political action committees (PACs).

Candidate campaigns have typically been financed by a small number of high-dollar contributors, many of whom live out-of-state. The Clean Elections system changes that system through the collection of large quantities of small-dollar ($5) contributions from Arizona voters. Clean Elections candidates collected

almost a half-million dollars (90,000 $5-qualifying contributions) in small contributions from Arizona voters – all of which goes to support the Clean Elections funding system.

Grassroots Campaigning

Clean Elections opened the door for increased voter communication by candidates. Through the collection of $5-qualifying contributions, candidates returned to walking door-to-door and attending small neighborhood gatherings – traditional aspects of grassroots campaigning that, in recent years, were replaced by high-dollar advertising and big dollar events.

Voter Education Materials

The *Vote for Arizona* education guide mandated by the Clean Elections Act also increases voter-contact. Voters have traditionally requested more information about candidates, especially information that is not candidate-biased or candidate-produced. In August and again in October 2002, the Citizens Clean Elections Commission mailed a voter guide to 700,000 registered-voter Arizona households. As part of the mailing, every household received information for early voting with postcard request forms and directions for contacting their local County Elections Department.

Every candidate, participating or non-participating, was given the opportunity to place a statement in the

Voter Guide. Out of 247 total candidates, only 36 did not place statements, thus 86% of all candidates for statewide and legislative offices participated in the Clean Elections Voter Guide. Even those candidates who chose not to participate in the Clean Elections system saw the incredible value of the Voter Guide. Even vocal Clean Elections opponents chose to participate in the Clean Elections Voter Guides and public forums because they understood that Arizonans want more information and less biased information than contributor-driven campaigning has produced.

Public Debates

All Clean Elections candidates were required to participate in public debates as part of the voter education principles of the Clean Elections Act. The CCEC teamed up with Arizona universities and community colleges to host these debates. Most of the statewide debates were televised as a public service by local public television stations. Public participation and attendance at such debates was limited in many cases but will grow as the public becomes better aware of such debates and is more comfortable with the openness of such debates.

Media Coverage

Since December 2001 there have been more than 800 news stories, editorials and letters to the editor published statewide in regards to Arizona's Clean Elections law including candidate stories, election

coverage, stories on the Citizens Clean Elections Commission and stories on the Clean Elections Institute. The Clean Elections Institute actively pursued press coverage by sending press releases, holding press conferences, engaging the media in phone conversations, visiting the capitol press room, setting up one-on-one meetings with reporters and producers and engaging radio talk-show hosts in thoughtful debate on the issue.

> The 2002 election coverage featured headlines such as: *Privately Financed Hopefuls on the Rise*, *An Election Unlike Any Other* and *Election Law Sets New Tone for State*.

The media took such an overwhelming interest in Clean Elections that the editorial pages were, at times, filled with opinions on Arizona's system of publicly financing campaigns. Since December 2001, Arizona papers published more than 100 editorials and letters to the editor hailing the positive attributes of the system and an equal number of mixed or opposing letters and editorials were also published. In addition to statewide coverage, NOW with Bill Moyers, the Newshour with Jim Lehrer, USA Today, Governing magazine, Campaigns & Elections magazine, the New York Times, Washington Post, the National AP and The Nation all covered Arizona's Clean Elections system and the 2002 elections.

Positive Changes Will Protect the Future

The Clean Elections Law has changed and continues to change political campaigns and the political climate in Arizona. The Clean Elections system is changing the influence of special interest money in elections and enabling community leaders not beholden to big money to campaign for public office. The Clean Elections system is also working to engage the public in the election system, either through participation in the $5 qualifying process or through voter education projects such as the candidate-voter guide or public debates.

The results of Clean Elections are clear:

- **More candidate choices for voters**
- **Less special interest and PAC influence**
- **More qualified candidates running**
- **More time dedicated to discussion and debate of issues**
- **Less time spent fundraising**
- **More public involvement**
- **Less big money influence**
- **Higher voter participation**

The positive changes to the political landscape in Arizona due to the Clean Elections system will continue for years. In 2002, Arizona voters supported the principles of our nation's Founders by electing Clean Elections participating candidates. Polling, candidate and voter participation all demonstrate that Arizona's Clean Elections law has support on all levels. The 2002 election results further prove that big money

donors and special interests can no longer buy Arizona voters nor pay for Arizona government.

Clean Elections worked well in its first two election cycles but improvements are vital to improving the system. Technical changes to the implementation process will ensure smoother operations of the system.

One possible change includes removing the frequent, sometimes daily, filing of campaign finance reports by traditional candidates who do not have any Clean Elections opponents. Without a Clean Elections candidate in that specific election campaign, such a change will eliminate the cumbersome and time consuming process of filing reports that are not necessary to the integrity of the Clean Elections system.

Matching funds remain key to ensuring that the Clean Elections system works properly. Arizona law already requires the reporting of a campaign expenditure at the time an order is placed or a contract signed, not when it is invoiced or paid. However, because it made no difference prior to the Clean Elections system, candidates were in the habit of reporting expenditures when they were paid even though the law stated otherwise. However, adherence to the existing definition of expenditure is critical for matching funds to be properly determined in a timely manner through the Clean Elections system.

Streamlining of complaints is also needed to improve the Clean Elections system and while due process is

necessary, the decision time in many cases may be months, long after an election is decided. While the public has the right to know if a candidate is in violation of campaign finance laws, the process must be adjusted so that complaints cannot be used as campaign weapons. Sound and balanced procedures for public reporting of complaints and decisions must protect both the public's and the candidate's rights.

Other changes may include random sampling of qualifying contributions and a change in the deadline for filing of forms. While this change may seem insignificant, it will assist candidates in receiving their original grant checks in a more timely and appropriate fashion.

The 2004 election cycle is already beginning and the Clean Elections system will be more broadly utilized than ever before because of its successes in 2002. It is advantageous for all candidates and the public that necessary and positive changes be made to improve the existing Clean Elections system while protecting the major strides already accomplished by the Clean Elections Act.

U.S. District Court for the District of Arizona

(Filed Jul. 2, 2009)

[Title Omitted In Printing]

DECLARATION OF DEAN MARTIN

Dean Martin, an Arizona State Senator, a plaintiff in the above-captioned matter, declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am Dean Martin, a resident of Phoenix, Arizona. I make this declaration based on my personal knowledge of the facts set forth below.

2. I am serving my second term in the Arizona State Senate, District 6. I was a nonparticipating candidate in 2000 and 2002, and am seeking reelection to my Senate seat in 2004. I am considering a candidacy for statewide office in 2006.

3. I have held the following offices: Arizona State Senator (2001-Present); Chairman, Senate Finance Committee (2003-present); Member, Appropriations Committee (2001-present); Member, Commerce Committee (2003-present); Member, Banking & Insurance Committee (2001-2002); Vice-Chairman, Government Committee (2001-2002).

4. I do not believe politicians should use taxpayer money to run for office. If presented with a truly voluntary system of government funding, I would not choose to use public funds due to closely held philosophical beliefs. Nevertheless, I believe that this Clean Elections matching funds system is so lopsided and coercive that there is

no real choice but to accept government funding. To be a viable and competitive candidate for office without taking government funding, you must be able to overcome the heavy burdens and shackles placed upon nonparticipating candidates. Since I am not a multi-millionaire, I have no choice when considering a run for statewide office but to use government funding, and only in limited circumstances can a run for legislative office be successful without government funding under the system as currently constituted. This is because the system provides overwhelming benefits to participating candidates and punishes nonparticipating candidates through its reporting requirements and contribution, expenditure, and independent expenditure matching fund provisions.

5. The Clean Elections matching fund system in fact and in practice is punitive against candidates that do not choose to use state funding. The following is the statement repeated continuously throughout the Clean Elections materials and instructions to nonparticipating candidates:

IMPORTANT NOTE

The campaign finance software, provided free of charge by the Secretary of State's Office, is programmed for the triggering events and will prompt the user when it is time to file a report. *The software must be opened and used* ***every day*** *during an election cycle in order for the triggering events to occur properly.* If campaign transactions are not entered

into the software when they occur, a trigger reporting deadline may be *inadvertently missed*, causing matching funds to be withheld from participating opponents. *The CCEC may initiate an enforcement action against a nonparticipating candidate who does not file trigger reports correctly.* A Clean Elections enforcement action may include fines of $100 a day up to twice the amount misreported and possible REMOVAL FROM THE BALLOT.[1]

6. On its face, the Clean Elections Act appears to require nonparticipating candidates to file 37 additional reports; in fact, we are told that we need to process all the reports every single day throughout the year-long election cycle in order to prevent an enforcement action.

7. As a candidate and elected official, the reporting system forced me to get to the one single computer with internet access that also has my campaign finance software installed every day to input transactions (donations and expenditures). Each month, I live in fear that events outside my control can cause me to be out of compliance and subject to stiff penalties as a nonparticipating candidate. For instance, automatic withdrawals such as monthly bank charges, website charges, or other normal campaign expenses may be charged but I wouldn't be notified of the charges for a few days. (Bank statements are notoriously mailed several days later, and the website provider

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[1] For more info on this, visit http://www.ccec.state.az.us/ccecscr/pub/pdf/nonPartReporting.pdf

automatically debits the campaign account monthly.) If those charges are enough to trigger a report, I am threatened with an enforcement action since the Commission repeatedly states that they will pursue enforcement actions even if a report was "inadvertently missed."

8. Due to the Clean Elections system's design and practice, even an eight dollar bank fee could cause the 70% trigger report under A.R.S. § 16-941(B)(2) (triggered at $7,924) or the 10% trigger report under A.R.S. § 16-959(A) (triggered at $1,132) to be missed. If the eight dollar fee occurs before a trigger date, but the data entry does not occur (since the bank statement may not have been received) until after a trigger date, the entire $7,924 or $1,132 is late and thus the candidate is subject to FORFEITURE OF OFFICE under A.R.S. § 16-942.

9. The design and practice makes it effectively impossible for nonparticipating candidates to use outside accounting staff since the delay required to send information to an accountant could put you out of compliance. For example, if I went to The Home Depot to buy sign posts and ties for the campaign after work at 8pm and spent anywhere from one dollar to several hundred dollars, that information must be entered into the software within the next 4 hours (before midnight) just in case it triggers a report. If I hire an accountant to process the work, they must agree to process expenditures at least until 9pm when the stores close (which is unlikely since there is only one computer that can store campaign finance software and they will not likely stay at

the office until 9pm on the chance that I might expend funds). The only other solution is to never make purchases after 5pm, on weekends, or anytime the accountant is unavailable to do immediate data entry (vacation or illness).

10. Since I have a job during the day as a Senator for the State of Arizona and routinely work past 5pm at the Capitol, most, if not all, campaign purchases will occur at night and on weekends. I have no choice but to complete all the onerous reporting myself. This is time that I will not have to campaign. This is an additional burden imposed by the government on a nonparticipating candidate's ability to campaign, which is not placed on government-funded candidates.

11. Allowing petty cash is not practicable for members of a nonparticipating candidate's campaign to make minor purchases. Since the campaign must report expenditures daily as they occur, all candidates must effectively make all their own purchases. I cannot tell a staffer, "Here's $20; when we run out of twist ties for signs, just go buy some more." Since I need to track the exact date of the purchase and report it the same day, practicality demands that I must purchase all supplies in advance and have it available to volunteers/staff. In fact, this process of reporting affects the schedule of even larger ticket items. Before I can purchase anything, I need to make sure that I can get home that night before midnight and do the data entry. Government-funded candidates have more flexibility in making expenditures and are not burdened by

the excessive reporting requirements imposed upon nonparticipating candidates.

12. Additionally, Internet access is required to post trigger reports. If your Internet access is unavailable (network maintenance is common late at night) you may "inadvertently miss" a trigger report. In order to prevent this from happening, as a nonparticipating candidate, I am forced to make provisions to stay in compliance, such as purchasing a "backup" dialup Internet access just in case my regular Internet connection is not available. While nonparticipating candidates are burdened with these hardships, their government-funded opponents can dedicate all of their time to campaigning.

13. The same process occurs with fundraising. I cannot schedule a fundraiser on the day of a trigger report, or if it is a large event, on the day before as well, since I must be able to do all the campaign data entry before the trigger date. The design and practice of the system only allows one person on one single computer to have access for data entry purposes. This not only takes time away from campaigning, but also eliminates some dates from being feasible for events. This affects both Primary and General election fundraising since both expenditures and donations must be filed, even if only one is required for trigger reports.

14. Unlike regular campaign finance reports, which, when a due date happens to fall on a weekend or a holiday, are allowed to be filed on the next business day, there is no provision for

next-business-day filing with Clean Elections trigger reports. Whereas government-funded candidates are not required to work on weekends and holidays, privately funded candidates are required to do so, or risk an enforcement action for "inadvertently missing" a trigger date. In fact, the very first trigger report is due on a holiday, New Year's Day.

15. As a candidate, I live in fear that a member of the campaign committee will accept a donation, but not immediately provide me with information for reporting purposes. If they have the donation in their possession before a trigger date but do not see or tell me until after a trigger date, we have missed a report "inadvertently." The reporting requirements are triggered during the General Election cycle by the acceptance of a donation, NOT the date of deposit of the donation into the committee's bank account. This is to prevent a candidate from delaying matching funds by just holding onto donations and not depositing them until they are needed. Unfortunately, it creates a system where "inadvertently missing" a report is possible if anyone other than the candidate or the treasurer accepts donations.

16. As a nonparticipating candidate, extensive additional training about complicated rules and procedures for campaign committee members and volunteers is required to prevent "inadvertently missing" a report that could get your candidate thrown off the ballot. None of this is required if the candidate would just choose government funding.

17. The trigger dates punish nonparticipating candidates by putting them at a competitive disadvantage to participating candidates. Nonparticipating candidates are required to publicly report their donations and expenditures more often, thus alerting their government-funded opponents of their campaign strategies, strengths and weaknesses; meanwhile participating candidates are not required to post their donations and expenditures as often, allowing them a significant advantage in terms of campaign timing and strategy.

18. Further, the Clean Elections Act punishes nonparticipating candidates by reducing the maximum individual contribution amount that nonparticipating candidates may accept by 20 percent. The Act, as well as the publicity surrounding the passage of the Act in 1998, purports to reduce the effects of "special interests" in elections. The Act's true purpose is to limit only those candidates that choose not to be government funded. The Act only limits donations in races where government funding is available. Other races such as school boards, city councils, JP's, county boards of supervisors, etc. are not limited. The stated purpose to reduce corruption is invalid since it is possible for a candidate to run for both school district board and legislature simultaneously. These candidates are allowed to accept the FULL individual contribution amounts for their school board race where government funding is unavailable. In fact, my legislative seatmate, Rep. Ted Carpenter, is an example of a candidate who is simultaneously running for both the Deer

Valley Unified School District governing board and the legislature.

19. The Clean Elections Act would have us believe that the same person, Mr. Carpenter, is not corruptible as a school board candidate, but is corruptible as a legislative candidate, and therefore, the legislative contribution limits must be lowered by 20%. This is not only absurd; it is punitive and coercive in its design to get candidates to choose government funding when it is available.

20. The practical effect of the reduction provision is to save the Clean Elections Commission matching funds while punishing nonparticipating candidates by limiting the fundraising potential only of those candidates in races where the government has a direct interest.

21. The design and practice of matching trigger reports to prevent an enforcement action is punitive and coercive to steer candidates toward government funding since the system mandates requirements in excess of even the stated purpose of the matching funds. The reports require both donations AND expenses to be reported even though matching funds are triggered by only one or the other, (depending on whether it is a Primary or a General election cycle).

22. The design and practice of the Clean Elections matching system shows that its true purpose is to coerce candidates to choose government funding by the implementation of the restrictive reporting and other requirements in cases where there is no stated need for implementation of

these reports. The extensive additional reporting is supposedly needed to provide matching funds to government candidates. However, the requirements and penalties are STILL IMPOSED in races where there was NO GOVERNMENT-FUNDED CANDIDATE. In the 2002 cycle, I ran as a nonparticipating candidate and my opponent did not qualify for Clean Elections funding; however, I was still subject to all the extensive Clean Elections regulations and trigger reports, under penalty of removal from office. In the 2000 election cycle, my Primary opposition was also privately funded, yet complaints were filed and the commission examined my reports to make sure I followed the reporting requirements even though there were no government-funded candidates and matching funds in the Primary Election.

23. In fact, the trigger dates for nonparticipating candidates began on January 1st of the election year. This first trigger reporting date occurs BEFORE it is even possible for a potential Clean Elections opponent to qualify and receive matching funds. Government funded candidates cannot even start to collect qualifying contributions until January 1st. The trigger dates ostensibly exist for the purpose of matching funds to participating candidates; yet since the trigger reports begin before a participating opponent can even begin the qualification process, these trigger reports are solely coercive in nature to influence a potential

candidate to take the easier and less regulated path of government funding.[2]

24. As I consider a potential campaign for statewide office in 2006, the punitive provisions of the "clean elections" system essentially leave me with no choice but to run as a participating candidate if I have any chance of winning statewide. Especially in statewide races, where the amount of money needed to succeed is significantly more than a legislative race, the "clean elections" system favors only self-funded millionaire candidates or government-funded candidates. Since I am not independently wealthy, I am compelled to become a participating candidate if I want to be competitive.

25. After watching the first statewide election cycle under the "clean elections" system, I have realized that in order to be competitive in a statewide race, I must accept government funding. In a legislative race, I have been able to manage the onerous additional reports by limiting sole donation and expenditure reporting authority to the candidate and treasurer alone. The number, size and frequency of donations, although time consuming, can still be managed by one or two people at the legislative campaign level, with a significant time commitment and understanding that we will be hamstrung in the process and saddled with additional burdens that our government-funded opponents will not have.

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[2] For more information, visit http://www.ccec.state.az.us/ccecscr/pub/pdf/collectingFive.pdf

However, it is clear that as the size and magnitude of campaigns balloon for larger offices, so does the number of people required to handle expenses. The costs to fundraise also substantially increase with the larger statewide campaigns and would continue to put my candidacy at a disadvantage if I chose private funding.

26. Further, the likelihood of independent expenditures increases substantially with a campaign for a statewide office. If an independent expenditure would be run against me, I would need to respond. However, any government candidates would get matched for any response, hard dollar for hard dollar. Thus, I would be financially behind by the amount of the original independent expenditure, plus by the amount of the new hard money given to me for the purpose of responding, which would be matched by the government to each of the other candidates in the race. I would fear an independent expenditure being run on my behalf, because by state law my campaign would have NO CONTROL over the planning and implementation of the expenditure; however, my government-funded opponents would get hard dollars which they DO CONTROL with which to respond.

27. The experience of the 2002 campaign cycle has shown that the systems' penalties are arbitrary and capricious against candidates who do not choose government funding. The burdens imposed on nonparticipating candidates can only be overcome in statewide races by being independently wealthy. Since I am not independently wealthy, it has become obvious that without

injunctive relief from the courts on this unequal and punitive regulatory environment, I cannot even consider a bid for statewide office as a non-participating candidate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 2004.

/s/ Dean Martin
Dean Martin

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

DECLARATION OF CHRIS BOWEN

* * *

1. I am Chris Bowen, campaign manager for Plaintiff Matt Salmon's 2002 gubernatorial campaign. I make this declaration based on my personal knowledge of the facts set forth below.

* * *

25. Not only were our operations severely crippled by the actions of the Commission, our opponents were effectively making money from our efforts to raise enough funds to continue our campaign. At least two or three nights per week, generous individuals were attending fundraisers on our behalf. We were paying for the cost of food, wine, entertainment and invitations. Our opponents were collecting the gross amount of everything we raised, while we had to settle for the net amount. A typical fundraiser cost us about 25% of the gross. As a result, we worked harder than any other campaign (because we had to) and we were penalized for doing so, since our efforts directly benefited our opponents. In fact, when President Bush came to Arizona to fundraise for Salmon, Janet Napolitano's spokeswoman, Kris Mayes, said "I'm not sure the president realizes he's raising money for both candidates," and also referred to the Bush dinner as a "dual fund-raiser" (Michelle Rushlo,

"*Bush to stump for fellow Republicans in Arizona*," *Associated Press*, September 26, 2002).

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of February 2004.

/s/ Chris Bowen
Chris Bowen

U.S. District Court for the District of Arizona

(Filed Jul. 2, 2009)

[Title Omitted In Printing]

DECLARATION OF MATT SALMON

Matt Salmon, former U.S. Congressman and 2002 Republican gubernatorial candidate Arizona, a plaintiff in the above-captioned matter, declares pursuant to 28 U.S.C. § 1746 as follows:

1. I am Matt Salmon, a resident of Mesa, Arizona. I make this declaration based on my personal knowledge of the facts set forth below.

2. I currently serve as president of Upstream Consulting, LLC, a public affairs consulting company. I was formerly a member of the U.S. House of Representatives elected in November 1994 to represent Arizona's First Congressional District, where I served a self-imposed limit of three terms, fulfilling a campaign promise I made to Arizona's voters in 1994.

3. While serving in the Congress I served on the International Relations Committee, and its subcommittees on Asia and the Pacific, and International Operations and Human Rights. I also served on the Helsinki Commission and was Chairman and a founding member of the House Renewable Energy Caucus. I also served on the Education and the Workforce Committee. Throughout his time in Congress, I maintained an active legislative agenda and played a prominent role on issues related to foreign

affairs, crime, education, energy and taxes, among others.

4. Prior to my election to the House, I served four years in the Arizona State Senate, and thirteen years as a telecommunications executive with US West Communications. In Arizona, I have been active in civic and community boards, including Mesa United Way, Child Crisis Nursery, East Valley Child Crisis Center, and the Maricopa County Council on Families, Youth, and Children. I am also on the National Advisory board of Childhelp U.S.A. I have also devoted considerable time and energy to the Association of Retarded Citizens of Arizona.

5. The Arizona Clean Elections system of public campaign funding makes candidates for public office accept taxpayer money through a series of punishing provisions. I suffered under this system as a private candidate for governor in 2002.

6. The independent expenditure provisions of § 16-952(C) worked against me when the Democratic Party made an independent expenditure of approximately $1 million for TV ads attacking me, alleging that I voted to cut seniors' benefits while in Congress. This expenditure was not counted against public monies to be received by my Democratic opponent Janet Napolitano. But when my own party countered the ad with a $330,000 independent expenditure – which by law was not coordinated, approved, or chosen by my campaign – this resulted in $330,000 being paid to both Napolitano's campaign and to

Independent Dick Mahoney, my other government-funded opponent. So while she could receive unlimited independent expenditures that either favored her or opposed me, the amount of any independent expenditure that favored me or opposed her ended up in her campaign account – because the State wrote her checks for matching funds. The only difference was, Napolitano got to decide how her money was spent, and I didn't.

7. Privately supported candidates like me would be better off refusing independent expenditures – in fact, looking back on it, it would have been better if none would have been made on my behalf, because my opponent would just have gotten the money. But that is not legally possible, because independent expenditures are by definition not coordinated or solicited by the candidate who benefits from them. I think that the law should treat these unsolicited independent expenditures neutrally, so that they have no effect on the recipient in any way. This would avoid punishing private candidates like me in the future. Because as the law stands now, whenever private candidates receive independent support that they do not control, they must suffer having Clean Elections give their government-funded opponents more, taxpayer money that these participating opponents do control.

8. Clean Elections hampered my private campaign spending in the 2002 Republican primary election by matching it dollar-for-dollar for each of my two government-funded opponents, Betsey Bayless

(who received $1,077,169.61 in taxpayer money) and Carol Springer (who received $1,068,850.87).[1] The state tried very hard to reduce my chances of winning by "leveling the playing field." The goal was making my two opponents have just as much money as I did, without them having to go out into the community and have political support reflected by private donations.

9. My gubernatorial campaign was severely punished by the provisions of § 16-952(B), in that Clean Elections paid Napolitano and Mahoney the *gross* amount of contributions received by me during the general election. After the primary President Bush came to Arizona and raised about $750,000 for the my campaign; I paid about $250,000 in expenses for the event, which included the cost for Air Force One, the cost of meals, the facility, and invitations, resulting in a net gain of $500,000. But the system turned around and gave my two government-funded opponents $750,000 each (an amount equaling my *gross* receipts), resulting in a net loss of $1 million for my campaign ($1.5M paid out to opponents *minus* the $500,000 net gain from the Bush event). In the future, who will run as a private candidate for governor of Arizona under these circumstances? No one will want to raise private money because the law guarantees the other side will get *even more money* in the

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[1] See Clean Elections Commission website, www.ccec.state.az.us/ccecser/elections/2002/candAccts.asp

general election than the candidate who did all the work and spent all the money raising the money!

10. Steve Moore, director of the Club for Growth, a conservative activist group, told me during the campaign that he would like to support my candidacy, but that his Board of Directors did not want to fundraise or contribute to my campaign because my opponents would just get the money – so it would be like contributing to them. Steve Moore also gave the same reasoning for declining to make a significant independent expenditure on my behalf.

11. This goes beyond mere promotion of the public funding scheme and punishes privately supported candidates like me. By failing to account for the significant fundraising costs incurred by traditional, privately supported candidates in the determination of matching funds, the system gives the government-funded candidates all of the benefits of my fundraising efforts, while ignoring all of the costs. In effect, this provides government-funded candidates with much greater than dollar-for-dollar matching funds, and actively discouraged private fundraising that would have been vital to my success.

12. Using A.R.S. § 16-941(B)(1), Clean Elections also reduced the amount of permissible contributions that I could receive by lowering the maximum personal donation amount by 20 percent. That made it more difficult for me, as a privately funded candidate, to raise the amount of money that subsidized candidates automatically receive, because all it did was

lessen the total amount of private money available to me from individual donors.

13. A.R.S. §§ 16-941(B)(2), 16-941(C), and 16-958 set up stringent daily reporting requirements that amounted to an overwhelming benefit for my government-funded opponents, by punishing me for refusing taxpayer money to run my campaign. My campaign had to spend much time, effort and money preparing and filing 37 special "trigger" reports, just so my government-funded opponents could be given more taxpayer money. By comparison, government-funded candidates like Napolitano and Mahoney were required to submit only three additional reports over and above the six reports that all candidates must file. The reporting requirements also operated coercively by punishing the acceptance of private finding, and provided government-funded candidates an advantage by forcing me to disclose valuable strategic information much more often.

14. The Commission enjoys unchecked power that was used aggressively against my campaign in 2002. By announcing allegations publicly before even investigating them – during the campaign – had a negative impact on the perception of nonparticipating candidates in general and my campaign in particular. Because the filing requirements for private candidates are so much more burdensome than for taxpayer-funded candidates, the Commission ends up going after nonparticipants like me in an effort to "level the playing field" and give my taxpayer-funded rivals a better chance of winning. This not only

creates a strong disincentive to the launching of private campaigns, but is downright un-American.

15. A.R.S. § 16-941(B)(1) seeks to coerce candidates to accept public financing by reducing the maximum individual contribution that can be accepted by a nonparticipating candidate by 20 (twenty) percent. It does not promote the acceptance of public funding, as it has no affect whatsoever on participating candidates. Rather, these reduced limits diminish the available pool of private resources available to a candidate who chooses to exercise his or her First Amendment right to bring his campaign speech to voters by not participating in the public funding scheme.

16. For the reasons so stated, I believe that the Clean Elections system is an unconstitutional monstrosity that must be drastically altered if democracy is to remain in Arizona's future. After seeing what happened to me, I doubt that anyone will be brave (or foolish?) enough to run a private campaign in the future.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of February, 2004.

/s/ Matt Salmon
Matt Salmon

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Tucson Weekly
July 29, 04

MORE DIRT ON CLEAN ELECTIONS

It was a hot and heavy week for the effort to dismantle the state's Clean Elections program.

First there's the news, curiously underreported south of the Gila River that onetime Libertarian candidate **Yuri Downing** was indicted for theft, fraud and perjury for his 2002 publicly funded campaign for the Arizona Legislature. (Wait a minute. We thought nobody was ever indicted on perjury charges!)

Fun-loving Yuri – son of Tucson's state Rep. **Ted Downing** – got a couple of his buddies together to run a Libertarian slate of candidates for the House and Senate. The trio had a good ol' time blowing about $100,000 while campaigning in Tempe and Scottsdale hot spots and nightclubs.

Yuri's accomplices agreed to pay back half their campaign funds but Yuri insists he did nothing wrong and ran a legitimate campaign. See ya in court!

* * *

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Arizona Republic Editorial

Clean up the Act

Let's give Clean Elections a thorough scrubbing before 2006

Aug. 22, 2004 12:00 AM

Arizona's Clean Elections Act, by the judgment of the state Supreme Court, will not be challenged on this fall's ballot.

Very well. Now what?

What do we do to attend to the glaring flaws that are written into this revolutionary method of financing elections?

Whether or not you agree with the high court's ruling is almost beside the point. Its practical effect is to cancel an anticipated $6 million showdown between supporters and detractors of the 1998 voter-approved act.

For die-hard supporters and critics, the debate over Clean Elections is a simple black-and-white matter: Either the public-financed system is heaven-sent or it is ushering free and democratic elections to hell in a handbasket.

But there also is a great middle ground. Even those who (however grudgingly) accept the value of allowing candidates the option to seek public funding for their campaigns still express grave misgivings about the system as it exists.

The 2002 elections in Arizona – the first in which the Clean Elections system was widely employed – revealed some gross inequities.

The law clearly punishes privately financed candidates.

Regarding funding, the example of GOP gubernatorial candidate Matt Salmon remains striking. Salmon's three-way contest against Democrat Janet Napolitano and independent Richard Mahoney provided stark evidence that the law discriminates against traditionally funded candidates.

A Salmon fund-raiser that brought in $750,000 but which cost $250,000 to mount, nevertheless triggered a $750,000 Clean Elections contribution to Napolitano's campaign and nearly as much to Mahoney's.

Matching funds provisions under Clean Elections fail to take into account the cost of raising those funds. Worse, the law permitted hundreds of thousands of dollars in independent expenditures to be spent by supporters of the Clean Elections candidates without triggering any compensation for Salmon, while independent support on Salmon's behalf prompted immediate matching funds for Napolitano and Mahoney.

Candidates and voters alike would be far better served if the public contribution to Clean Elections candidates simply was increased and the matching-funds provisions were dropped.

Also, the Clean Elections law burdens traditionally funded campaigns with extraordinary reporting requirements including daily reports as Election Day approaches. Clean Elections candidates have far fewer reporting requirements.

A number of the law's tenets beyond campaign financing could do with some reconsideration, too. In particular, the candidate statement booklet published by the Citizens Clean Elections Commission is becoming a real embarrassment.

Rather than take the opportunity to explain their positions to voters, many candidates are using the booklet to pummel their opponents, often with scurrilous accusations that the commission cannot justifiably edit. The commission would do better to publish nothing at all.

To date, even the most minor Clean Elections "reform" efforts have garnered few supporters. Following the 2002 elections, a committee of mostly government staff proposed a list of reforms of the law, all of them highly technical and none of them attending to the issues cited above. Even those modest proposals failed to gain the support of lawmakers.

Opponents of the law say they will re-write a ballot measure they feel will pass Supreme Court muster,

and launch it for 2006. It's their right. We would hope, however, that their allies in the Legislature won't oppose efforts to reform Clean Elections.

Strategically, opponents of Clean Elections may wish to have the worst possible campaign funding law to present to voters in 2006. But in the process they will be doing a disservice to the rest of us.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

CAPITOL TIMES AZ Capitol Times September 10, 2004

Losing Candidate Probed Over Signatures To Qualify For Public Funding

A defeated Democratic candidate for the House in District 28 is being investigated for allegedly forging signatures on forms to qualify for public campaign money.

A search warrant filed Sept. 1 in Pima County Superior Court identified the candidate as Dan Lawrence, 25.

The investigation grew out of suspicions in the Arizona Secretary of State's Office in August when Mr. Lawrence submitted 223 $5 contributions to qualify for up to $11,320 in public funding for the primary election. He did not receive any public funding.

Legislative candidates need contributions from at least 210 registered voters to qualify for public funding.

Officials in the Secretary of State's Office said at least 75 of the signatures accompanying the contributions couldn't be identified. They included signatures in which the names of registered voters were misspelled and many of them appeared to be signed by the same person, officials said.

The Citizen's Clean Elections Commission, which administers public campaign funds voted 3-2 at its Aug. 31 meeting to decertify Mr. Lawrence which means he will not be able to receive public money.

* * *

U.S. District Court for the District Of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Publication: Tribune 2003-Current; Date: Sep 15, 2004; Section: East Valley News; Page: 8

Clean Elections panel backs extra funds for close races

By PAUL DAVENPORT THE ASSOCIATED PRESS

A state commission on Tuesday refused to back down from providing extra campaign cash for some legislative candidates in hot primary races, and a group whose mailers triggered the payments said it will press a legal challenge.

The Citizens Clean Elections Commission ratified its staff's decision to provide a total of $67,500 of extra funding to 15 candidates to offset money spent by a group praising moderates.

Although the commission backed the staff decision, it also Tuesday reversed a 2-year-old policy and said it, not staff, will make the call in similar cases in the future.

That change probably will delay payment of matching funds to publicly funded candidates to offset so-called "independent expenditures" that benefit rival candidates, commission Executive Director Colleen Connor said.

Connor and other commission staff members in August authorized the matching funds because of

preprimary mailings by Mainstream Arizona, a group that supports moderate candidates.

Five of nine candidates praised by Mainstream Arizona's mailings lost in Tuesday's primary election. Mainstream Arizona on Friday filed a lawsuit arguing that its mailings should not have triggered matching funds to rivals of the moderate Republican legislators it praised.

The Clean Elections system provides a limited amount of matching money to participating candidates to offset higher spending either by nonparticipating candidates or independent groups' efforts to influence election outcomes.

Mainstream Arizona's lawsuit contends the mailings did not expressly advocate re-election of the incumbents, but the commission and its staff concluded the mailings amounted to election endorsements.

Commissioner Marchia Busching of Phoenix proposed the policy change.

"It seems appropriate because we have gotten to a point where we have got a number of close questions," she said after the meeting. "The whole issue can get very complicated and difficult."

Mainstream Arizona cochairman Jack Jewett later said the possibility of more matching funds has a chilling effect on his group's plans.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Arizona Republic Editorial
Reforming a reform

Any fix for Clean Elections must include an end to 'matching funds'

Dec. 2, 2004 12:00 AM

If Arizona's trailblazing campaign-finance law, Clean Elections, is to fulfill its expectations, supporters are going to have to make some hard choices about just what those expectations really are.

Thus far, they seem inclined merely to nip at the edges of its deficiencies, a decision that someday may imperil the system's future altogether.

In a "My Turn" column published last Friday on the Opinions page, the Citizens Clean Elections Commission voter-education manager, Autumn Southard, presented four reforms the commission will recommend to the next state Legislature.

Some have value, such as the proposal to help candidates who survive expensive primary races and who then face general-election opponents who did not. But overall they amount to tinkering, not real reform.

To effect real change, supporters must better come to grips with the law's mission.

Is the primary mission of Clean Elections to provide electoral access to candidates who otherwise could not

afford to run? We think it is, and the impressive diversity of candidates running in the last election cycle suggests that in this regard the system is working.

But many activist supporters of Clean Elections cling to the far more elusive hope that it will somehow eradicate all imbalances – real and perceived – from election campaigns. Down this road lie the inherent dangers of unintended consequences.

The short history of the 1998 voter-approved law is exposing its fundamental flaws: its mind-blowing complexities for understaffed campaigns, especially traditionally funded ones; its embedded hostility to those candidates who choose not to use public funds, and, the counterproductive mirco-management that is written into the law.

At the heart of the law's issues is the Utopian expectation that if its enforcers dam up (or try to dam up) every avenue for special interests to influence an election, eventually they will give up and go away. This is a ludicrous expectation.

If supporters want to make Clean Elections work, they must come to terms with its real bugaboos. And the top bugaboo by far is its "matching funds" provision, which seeks to counter private contributions and independent expenditures.

This provision creates as much inequity as it supposedly resolves.

Let's fix that one by providing "Clean" candidates with a reasonable sum of money to run and do away with matching funds, if their opponents choose to run with private funds, let the chips fall where they may.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Foothills Focus
March 2, 2005

Clean Elections Commission not so clean?
Steele Coddington

ANTHEM – Anthem resident Patrick Meyers, acting on what he considers the Arizona Clean Elections Committee's "selective enforcement" of the Clean Elections Law against five conservative Republicans, has filed complaints against Governor Janet Napolitano and Attorney General Terry Goddard.

In his complaints, filed Feb. 24, Meyers specifically points out that the commission has publicly stated and maintained "that payments from campaigns must be made directly to the root vendor, i.e. no brokers, middlemen, consultants, etc." He further stated "that recent audits of several campaigns resulted in the auditors confirming that the payments to vendors/consultants were proper and were properly reported, yet the commission while accepting the audits, specifically refused to accept that finding."

Meyers points out that while the commission has initiated investigations into allegations and complaints for such actions against a few conservative candidates, it has failed to investigate the same conduct by a large number of other candidates, including Napolitano and Goddard in the 2002 campaign.

His complaint documents 83 specific expenditures by Napolitano's 2002 campaign, obtained from campaign finance reports filed with the Secretary of State's office, amounting to more than $1,962,341. All allegedly violate Clean Elections while apparently under the same presumption of legality that affects the complaints against the current five Republicans.

For example, Meyers lists as Napolitano's complaint #58 "a payment of $199,959.40 was made on 08/27/2002 to Shorr and Associates for Primary Election Media Buy. This is a clear example of a middleman and given the enormous size of the expenditure, I cannot imagine how Clean Elections allowed it in the first place. It also seems obvious that the Philadelphia address makes it additionally clear that this single expense item fails to disclose any of the local vendors who actually provided the media time/space being purchased . . . Shorr is not the actual vendor and under Clean Elections interpretation this would be a violation as payments were not made directly to a vendor."

Meyer's complaints against Attorney General Goddard documents at least 21 similar alleged violations of Clean Elections expenditures.

Self-described private citizen Meyer's whole point is that if people like Napolitano and Goddard, both lawyers and Attorney Generals, charged with knowing the law, interpreted it in essentially the same way as the five Republicans, how come the conservative

Republicans are the only ones held to a different or higher standard of understanding.

The conclusion is that the Clean Election Commission is guilty of failing to conduct its duties with impartiality, and the entire law needs rethinking or repeal so that mere commission interpretations don't cloud the reputations of candidates who have won elections based on ethical campaigns.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Clean Elections. Make your voice heard.

Ever wish you could level the political playing field? Give people from different backgrounds a shot at being elected? Well, now you can. Here in Arizona, we have the Citizens Clean Elections Act, which provides funding to citizens who choose to run for legislative or statewide office.

Candidates may receive campaign funding from the Citizens Clean Elections Commission after they collect a minimum number of valid $5 qualifying contributions from registered voters. Registered voters can give $5 qualifying contributions to as many individual candidates as they would like – there is no limit. And, the party affiliation of the candidates or the registered voters does not matter!

By making $5 qualifying contributions to the candidates of your choice, you can get involved and help level the playing field. You can help impact the political process for about the cost of a bumper sticker. To find out more, visit www.azcleanelections.gov.

[LOGO]

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

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phone (602) 258-4554 •
fax (602) 252-2729

p.o. box 13178 •
phoenix, arizona 85002 •
www.brc-research.com

AWARENESS AND ATTITUDE STUDY

January 2006

Prepared for

Off Madison Ave and
Arizona Citizens Clean Elections Commission

Prepared by

Behavior Research Center, Inc.
1101 North First Street
Phoenix, Arizona 85004
(602) 258-4554

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* * *

EXECUTIVE SUMMARY

Major findings from this study include:

- Half of Arizona heads of household are unaware of the Clean Elections Act. However, two-thirds of high-efficacy voters are familiar with the program.
- Among those familiar with Clean Elections, support for continuing the program is very widespread, with 85 percent calling the program important to the voters of the state.
- Provision of funding and oversight of the electoral process are the main roles of Clean Elections in the minds of those who are aware of the program.
- Six in ten indicate that whether a candidate is "clean" makes no difference as to his/her credibility, but one-fourth feel a "clean" candidate is more credible, while just one in ten feel a "clean" candidate is less credible.
- Almost half feel a spending limit violator should be required to repay the amount spent that is over the limit, while three in ten feel that candidate should be removed from office.
- Stories in newspapers and on television are the main sources of information on Clean Elections.

DETAILED FINDINGS

Familiarity With Clean Elections Programs

Half (49%) of all respondents know nothing at all or have never heard of the Clean Elections program and fewer than one in ten (8%) profess to be very familiar with it. However, among high-efficacy voters, overall awareness rises to two-thirds (67%), and over half are very (14%) or somewhat (41%) familiar with the program.

As may be seen in Table 1, women, younger respondents, Democrats and minorities are least familiar with Clean Elections. In addition, we note that Maricopa County residents are more aware of the program than are Pima County or rural residents. This may trace to the news coverage, centered in Maricopa County, over the case of Representative Smith and the challenge to his seat.

TABLE 1

"Thinking about legislative and statewide elections here in Arizona, would you say that you are very familiar, somewhat familiar, not very familiar or not at all familiar with the election funding program called Clean Elections?"

	Very Familiar	Somewhat Familiar	Not Very Familiar	Not At All Familiar/ Never Heard Of
TOTAL	8%	32%	11%	49%
GENDER				
Male	9	37	12	42
Female	7	26	9	58
AGE				
Under 35	2	24	7	67
35 to 54	8	34	13	45
55+	14	38	11	37
POLITICAL PARTY				
Republican	11	36	12	41
Democrat	6	31	11	52
Independent/ Other	10	42	9	39
High Efficacy Voter	14	41	12	33
ETHNICITY				
Caucasian	9	36	11	44
Hispanic	3	18	15	64
Other	5	22	5	68
COUNTY				
Maricopa	10	33	12	45
Pima	6	28	8	58
Rural	4	30	9	57

* * *

PERCEIVED FUNCTIONS OF CLEAN ELECTIONS

Almost four in ten (37%) of those who are aware of Clean Elections identify funding of candidates as the principle role of the program while another one-fourth (25%) mention overseeing the political process. On the theory that awareness of functions tracks roughly the level of significance of each function, we note that Independents, Libertarians and other minor party voters find the overseeing of the political process as more important than do Republicans and Democrats.

One-fourth (24%) of those who are aware of the program are unaware of what it does.

TABLE 4

"As far as you know, what does Clean Elections do? (PRECODE; RECORD ALL MENTIONS; PROBE: *What else?"*

Among Those With An Awareness of Clean Elections

		Political Party		
	TOTAL	Republican	Democrat	Independent/ Other
Provides funding to candidates	37%	43%	39%	38%
Police/ oversee the electoral process	25	21	26	33
Endorse certain candidates	8	5	11	9

Enforce contribution/spending limits	8	10	6	9
Lowers emission/cleans up pollution	4	4	4	2
Other	1	1	1	0
Not sure	24	21	25	14

Totals exceed 100% due to multiple responses

		Gender		Age		
	Total	Male	Female	Under 35	35 to 54	55 +
Provides funding to candidates	37%	42%	31%	44%	42%	29%
Police/oversee the electoral process	25	29	21	23	20	33
Endorse certain candidates	8	9	7	14	9	5
Enforce contributions/spending limits	8	8	8	0	10	10
Lowers emission/cleans up pollution	4	2	6	5	6	2
Other	1	1	1	0	0	2
Not sure	24	20	28	29	20	23

Totals exceed 100% due to multiple responses

Credibility of Clean Elections Candidates

While six in ten (59%) feel that whether a candidate runs as a Clean Elections candidate or is privately funded makes no difference to the candidate's credibility. Among those who feel it makes a difference, those feeling "clean" candidate is more credible outnumber those who feel the candidate is less credible by a 2½-to-one margin.

Among Republicans, the more credible/less credible ratio narrows to virtually even.

TABLE 5

"Do you feel a candidate who runs for office under Clean Elections guidelines and uses public funding is more credible or less credible than a candidate who raises his own money, or does it make no difference to you?

Among Those With An Awareness of Clean Elections

	More Credible	No Difference	Less Credible	Not Sure
Total	25%	59%	10%	6%
Gender				
Male	26	61	8	5
Female	23	57	13	7
Age				
Under 35	11	77	6	6
35 to 54	30	55	11	4
55+	25	57	11	7

Political Party				
Republican	17	63	15	5
Democrat	32	55	8	5
Independent/Other	29	59	6	6
High Efficacy Voter	24	60	11	5
Ethnicity				
Caucasian	26	58	10	6
Hispanic	21	61	5	13
Other	18	66	12	4
County				
Maricopa	20	62	11	7
Pima	37	43	16	4
Rural	29	64	2	5

Penalties for Violating Clean Elections

Respondents were asked what penalty is most appropriate for a "clean elections" candidate who violates the spending limit. Overall, just under half (46%) feel the candidate should be required to repay the amount spent that is over the limit, while three in ten (31%) feel the candidate should be removed from office.

As may be seen in Table 6, Republicans tend to be more lenient, while Democrats lean more toward more stringent measures.

TABLE 6

"When a candidate for office violates the spending limit, how should that person be penalized? Should they be removed from office, fined or be required to repay the amount that is over the limit?"

Among Those With An Awareness of Clean Elections

		Political Party		
	TOTAL	Republican	Democrat	Independent/ Other
Repay amount over limit	46%	58%	38%	46%
Remove from office	31	25	37	28
Fine	15	9	14	21
Do nothing	1	1	*	2
Unsure	7	7	11	3
	100%	100%	100%	100%

*Indicates less than .5 of one percent

		GENDER		AGE		
	Total	Male	Female	Under 35	35 to 54	55 +
Repay amount over limit	46%	44%	48%	49%	51%	39%
Remove from office	31	33	29	19	29	39
Fine	15	14	15	24	12	13
Do nothing	1	1	1	0	1	2
Unsure	7	8	7	8	7	7
	100%	100%	100%	100%	100%	100%

Importance of the Clean Elections Act

When asked how important it is to the voters in Arizona that the Clean Elections Act continue, fully 85 percent indicate it is very (54%) or somewhat (31%) important. Among Democrats, support for continuation of the program is virtually universal.

TABLE 7

"Do you think it is very important, somewhat important, not very important or not at all important to voters in Arizona that the Clean Election Act continue?"

Among Those With An Awareness of Clean Elections

	Very Important	Somewhat Important	Not Very Important	Not At All Important	Not Sure	Net* Important Not Important
Total	54%	31%	6%	4%	5%	+75
Gender						
Male	52	31	8	6	3	+69
Female	55	31	5	2	7	+79
Age						
Under 35	33	57	2	2	6	+86
35 to 54	56	27	9	4	4	+70
55+	61	23	7	5	4	+72
Political Party						
Republican	44	32	12	5	7	+59
Democrat	71	26	1	1	1	+95
Independent/Other	53	40	4	2	1	+87
High Efficacy Voter	59	23	8	5	3	+71
Ethnicity						
Caucasian	51	32	8	3	6	+72
Hispanic	52	39	0	8	1	+83
Others	74	18	0	8	0	+84
County						
Maricopa	50	34	8	5	3	+71
Pima	52	26	5	5	12	+68
Rural	68	27	1	2	2	+92

*Very important + somewhat important - not very important - not at all important=Net

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

OpEdNews.com

Original Article at http://www.opednews.com/articles/opedne_todd_lan_060417_big_money_contributi.htm

April 17, 2006

Big Money Contributions in Political Races Will Open Flood Gates in 2006 Race

Citizens Clean Elections Commission Op-Ed

By Todd Lang.

Not too long ago, the citizens of Arizona realized a critical need to address how statewide and legislative elections are conducted. Recognizing a desire to remove special interest money from Arizona politics and to level the playing field in campaign financing, Arizona voters approved the ballot initiative establishing the Citizens Clean Elections Commission, in 1998.

Arizona's successful program has spawned many imitators. States such as New Jersey, West Virginia, Connecticut, Oregon and Washington are working to enact campaign finance laws and programs modeled after Arizona's Clean Elections Act.

Today, this voter-approved law is under attack by the state legislature via a last-minute "striker" bill (SCR1013) that would eliminate most Commission funding and cripple the advances Arizonans have

made toward improving campaign finance reform. Even more troubling is the intention of the legislation to relax penalties for candidates who violate campaign finance laws, and allow for exorbitant contribution increases from both individuals and political action committees.

This new legislation would effectively end meaningful regulation of so-called independent expenditure committees and their attack ads. It also allows individuals to contribute up to $5,000 to a candidate's campaign committee. Currently, for the entire election period, the limit for statewide candidates is $760; and $296 for legislative candidates. In essence, if this proposed law is passed, the efforts by Arizona voters to remove special interest money from candidate elections and to regulate how candidates finance their campaigns would be completely lost. In a time when our nation is facing some of the worst campaign finance corruption scandals in its history, it is stunning that some politicians would want to open the floodgates for unparalleled big money contributions.

A January 2006 survey conducted by Phoenix-based Behavior Research Center reveals that 85 percent of Arizonans surveyed believe that Clean Elections is important to Arizona. More taxpayers are making $5 contributions and more candidates are participating in public funding each election cycle. The People of Arizona made a choice to reform our campaign finance system, and that decision continues to be the right one.

We all recognize that the Clean Elections law is not a panacea, and there are challenges with any new progressive law. However, I encourage the State Legislature to listen to the voters and work to improve the law through proactive legislation that builds on the original intentions of the voters who created and enacted this law.

Todd Lang

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

EAST VALLEY TRIBUNE
MESA, AZ

Catalog in Clean Elections sights

Commission: Is endorsement an in-kind donation?

By HOWARD FISCHER

CAPITAL MEDIA SERVICES

The Citizens Clean Elections Commission will have to decide what is a legitimate newspaper and what is not.

Todd Lang, executive director of the Citizens Clean Elections Commission, said he is exploring whether an endorsement of Republican gubernatorial hopeful Len Munsil in a catalog published by a Prescott gun dealer amounts to an in-kind contribution to Munsil's campaign.

An in-kind contribution is a noncash gift that can be given a cash value. The catalog with the endorsement was mailed to about 13,000 Arizonans.

Lang said if such an endorsement is to be considered a contribution – which is his preliminary conclusion – then the value of that endorsement should be considered an expense by the Munsil campaign.

And that would trigger a match of public monies to Don Goldwater, the other publicly financed candidate in the Republican gubernatorial campaign.

What Lang and the commission conclude has implications far beyond the J&G Gun Sales catalog: It puts the state in the position of defining what is a legitimate news publication. That's because an endorsement by what the commission considers a newspaper or magazine does not trigger matching funds, even if that endorsement were to suggest that people volunteer time or donate funds to the candidate.

But an identical plea in a private publication that goes out to more than just association members, Lang said, effectively is a donation.

At the heart of the battle is an eight paragraph endorsement of Munsil in the J&G catalog sent out at the end of March, signed by Brent DeSaye, vice president of the family-owned company.

DeSaye wrote that he had spoken to Munsil about "issues that are critical to Arizona shooters and hunters" – and found him friendly to issues of the right to own and carry firearms "how and where they choose."

Lang said there is no evidence of coordination between DeSaye and Munsil that would have made the endorsement – DeSaye called it an "editorial" – an illegal direct campaign donation. But he said it still could qualify as an in-kind contribution.

He conceded that course of action is fraught with potential pitfalls. The first, he said, is determining the value of the endorsement.

Potentially more serious would be that the Citizen's Clean Elections Commission would have to determine what is a legitimate news publication, whose endorsement does not trigger matching funds, and what is not.

"My preliminary take is this is not a newspaper," Lang said.

"This is effectively a mailer," he continued. "It's effectively the same thing as printing a gun catalog, mailing it to your guys, and then sticking a poster of Munsil in the middle of it."

Lang conceded he's not exactly sure where the line is drawn. But he said that daily newspapers clearly qualify legitimate publications and the J. Crew catalog does not.

"The question is what about in between those two?" he said.

The matching dollars provision is available only to candidates who accept public funding for their campaigns and agree to limit spending. Republicans Mike Harris and Gary Tupper are running for governor with private donations or their own cash and would not get a match.

* * *

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

AZ Capitol Times

November 17, 2006
2006 POLITICAL ALMANAC
What happens when you run afoul of the rules
By Christian Palmer, { }

Four election cycles have passed since Arizona voters passed the Clean Elections Act of 1998. Enforcing the statutes passed by the act has been time consuming. Many candidates have been forced to pay fines or reached agreements with the commission without admitting guilt to violating campaign finance laws.

The following candidates received the greatest penalties, and perhaps, most interesting, for intentionally or unintentionally running afoul of the Clean Elections Act rules.

David Burnell Smith:

Overspent, gets 'death penalty'

Original fine: $44,000

Reduced to: $2,500

It's one thing for elected officials to get themselves into trouble and another to lose elections when voters begin to question their character. But there's something to be said for making history, and Scottsdale/Carefree Rep. David Burnell Smith did just that

when he became the first legislator in the nation to be removed from office for campaign finance violations.

When the Citizens Clean Elections Commission found the District 7 Republican had overspent his 2004 primary election limit by more than $6,000 and ordered him to leave office, the West Virginia native didn't disappear quietly. Mr. Smith, a lawyer by trade, fought and lost every step of the way to the Arizona Supreme Court, which also denied his claim that the power to remove elected officials lies solely with citizen recall and impeachment by the Legislature.

The decision affirmed commission authority to sentence candidates who overspend by 10 percent or greater to the "death penalty," leaving advocates of publicly funded campaigns overjoyed, and Mr. Smith in self-described financial and emotional ruins.

But the saga of the man who ran four previous unsuccessful campaigns before his election in 2004 was not over. He filed an additional challenge against the commission based on a U.S. Supreme Court decision that struck down low contribution limits established in Vermont, and ran a competitive re-election campaign, this time with private funds.

After failing to qualify for the 2006 general election, he appeared before the CCEC asking for partial relief from the $44,000 in penalties levied against him for his earlier infractions. To his relief that wish was granted. On Oct. 25, the commission agreed to accept a fine of $2,500.

Libertarian team:

Bar tabs, car rentals

Original fines totaled: $26,970 each

Reduced to: $15,000 each

Usually car rentals, liquor and bar tabs don't show up on campaign finance reports, but Yuri Downing-Garcia and associates Trevor Clevenger and Paul DeDonati introduced a novel campaign method in 2002.

The trio ran and subsequently lost as a Libertarian team for House and Senate seats for District 17, which covers south Scottsdale and most of Tempe, including Arizona State University.

The commission and staff were not swayed by Mr. Downing-Garcia's claim that the "unconventional" campaigning in Scottsdale nightclubs such as Sanctuary, Six, and the Cat Eye Lounge was necessary to reach young voters. Colleen Connor, CCEC executive director at the time, noted most of the clubs were not even in their district and that little evidence of a political campaigning was ever discovered.

An indictment by the Attorney General's Office alleges Mr. Downing-Garcia filed false campaign finance reports, converted as much as $5,000 of public campaign funds into hard cash, and paid himself $111 after the 2002 general election in order to drain his campaign account.

Mr. Downing-Garica, who also served as campaign treasurer for Mr. Clevenger and Mr. Donati, would later be indicted for theft, fraud and multiple counts of perjury. And while his accomplices would later individually settle with the commission for $15,000 (paid for by an anonymous source), Mr. Downing-Garcia skipped a sentencing hearing and was arrested days later by Salt River Police while driving with a loaded handgun and a forgery device.

After serving almost a month in jail, he failed to report to another sentencing hearing in May and a warrant was issued for his arrest. His whereabouts are still unknown.

Bill Montgomery: Blurring the lines between primary, general election spending

Fine: $43,000

Illegal immigration was certainly a hot campaign topic for all Arizona candidates in 2006, and Republican challenger for attorney general Bill Montgomery was no exception. The former tank commander and West Point graduate repeatedly charged during the campaign that incumbent Attorney General Terry Goddard had failed to take illegal immigration seriously – and that Arizona's crime rate went through the roof as a result.

But Mr. Goddard's campaign would have the last word in the immigration debate. On Sept. 22, a complaint was filed with the Citizens Clean Elections Commission alleging that Mr. Montgomery filmed a tough-on-illegal-immigration commercial late in the

primary cycle that included authentic illegal immigrants.

Those charges are currently being investigated by the Maricopa County Sheriff's Office, and Mr. Montgomery has maintained he had no role in the hiring of actors for the commercial and that he believed the Hispanic men were volunteers.

The commission refused to rule on the alleged use of illegal immigrants but did believe that Mr. Montgomery's campaign inappropriately used primary campaign funds for general campaign purposes.

The Republican candidate was permitted to use the commercial, which reportedly was filmed on primary election day due to scheduling difficulties, but the commission reached an agreement with Mr. Montgomery to accept $43,000 from his general campaign allotment as a repayment for funds spent with the intent to air the ad.

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

espressopundit.com

7-30-07

The problem with 'Clean Elections' commissions

Today the New York Post, in discussing the unintended consequences of regulating political speech, mentioned a dark chapter in the short history of Arizona's Citizens Clean Elections Commission.

{ HYPERLINK

"http://www.nypost.com/seven/07302007/postopinion/opedcolumnists/dont_let_nys_hacks_muzzle_you_oped columnists_stephen_m_hoersting.htm" }

> *"Nobel laureate James M. Buchanan Jr. teaches that there is no such thing as the disinterested bureaucrat. Throughout the country, "unbiased" enforcement agencies have been accused of making decisions based on politics rather than the merits.*
>
> *Consider Arizona, which claims to be model of "clean elections" of the kind Spitzer wants. Matt Shaffer, then a deputy director of that state's Citizens Clean Elections Commission, accused the agency's executive director of acting in an "unfair and political" manner by treating the campaign-finance violations of Republican gubernatorial candidate Matt*

Salmon more harshly than the violations of other candidates in that 2002 race.

The commission then turned around and fired Shaffer, claiming that he had "willingly and deliberately concealed" violations by Salmon. In 2005, a federal jury awarded Shaffer $1.1 million for defamation but declined to find that he was wrongly terminated."

U.S. District Court for the District of Arizona

(Filed Jul. 2, 2009)

[Title Omitted In Printing]

DECLARATION OF CHAD KIRKPATRICK

---

1. I, Chad Kirkpatrick, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am the Chairman of the Arizona Taxpayers Action Committee ("Arizona Taxpayers"), an Independent Expenditures Committee organized pursuant to Ariz. Rev. Stat. Ann. § 16-902. I make this declaration in support of Plaintiffs' First Amended Complaint in the above-referenced matter.

3. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

4. Arizona Taxpayers was first organized in 2006. That same year, Arizona Taxpayers made independent expenditures in the primary election cycle in Legislative District 8.

5. In Legislative District 8, Arizona Taxpayers supported a government-funded candidate who was running against a privately financed candidate, meaning that Arizona Taxpayers' expenditures did not trigger any matching funds to the candidate it opposed.

6. Arizona Taxpayers also made expenditures to advocate the defeat of two Arizona Propositions, Prop. 201 and Prop. 203.

7. Arizona Taxpayers will make independent expenditures in the 2008 and 2010 elections and in other future elections. Arizona Taxpayers will soon have to decide whether to speak out against government-funded candidates (or in support of a privately financed candidates with government-funded opponents) thus trigging matching-funds under the Citizens Clean Elections Act (the "Act").

8. In the 2008 election cycle, Arizona Taxpayers will participate in at least three and up to five state legislative races within Maricopa County. Arizona Taxpayers will make a decision as to the precise number of legislative races in which it will participate, and the extent of such participation, based in part on whether Arizona's Taxpayers speech will trigger matching funds to a government-funded candidate whom Arizona Taxpayers, and its donors, desires to defeat. Arizona Taxpayers will either not voice its opinion, or will voice

its opinion to a lesser extent, when its expenditures will help a candidate with whom it disagrees.

9. When the Clean Elections Commission provides government funds to candidates with whom Arizona Taxpayers and its donors disagrees, based solely on Arizona Taxpayer's exercise of its free speech and free association rights, Arizona Taxpayers, and its donors, will be severely and negatively impacted by the operation of the Act. Because the expenditure of funds by Arizona Taxpayers will directly be responsible for adding to the government funded candidate's campaign coffers by spending that money, Arizona Taxpayers' speech and association rights will be impaired. The knowledge that a candidate Arizona Taxpayers does not want to be elected will receive a government subsidy, as a direct result of Arizona Taxpayers speech, will prevent Arizona Taxpayers from the full and unrestricted exercise of its speech in such races. Thus, rather than creating and fostering a system where there is "more" speech, the Act creates a climate of self-censorship resulting in less political speech.

10. During the 2006 election cycle some prospective donors expressed concern that their contributions would trigger government funds being distributed to a candidate they disagreed with. Donors were reassured that Arizona Taxpayers were not participating in an election where the opposing candidate was receiving government funds. Heading into the 2008 election cycle, when an opposing candidate receives funds from the Act, Arizona Taxpayers will either not spend money to

voice its opinion, or it will curtail its spending, due to concerns raised by potential donors in the 2006 election cycle.

11. Pursuant to 28 U.S.C. §1746(2), I, Chad Kirkpatrick, hereby declare under penalty of perjury under the laws of the United States and the State of Arizona that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Chad Kirkpatrick
Chad Kirkpatrick

EXECUTED ON
NOVEMBER 20, 2007

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

DECLARATION OF DEAN MARTIN

---

1. I Dean Martin, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am currently the Arizona State Treasurer. I was elected to that position in 2006. From 2001 to 2006, I was an elected member of the Arizona State Senate. I make this declaration in support of Plaintiffs' First Amended Complaint in the above-referenced matter.

3. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

4. I will run for statewide office in Arizona in future elections. I will be eligible to run for a second term as State Treasurer in 2010. While I would prefer to raise private contributions to fund my next statewide campaign, because the Citizens Clean Elections Act (the "Act") penalizes privately funded candidates I might be forced to run with government funds.

5. In my most recent race for State Treasurer, as a privately financed candidate, the matching funds provision of the Act forced me to self-censor myself. I was forced to limit my speech and abide by the Act's expenditure limits or risk being further outspent by my government-funded opponent because of the operation of the Act. In that regard, I was not able to raise or spend money to engage in my fundamental First Amendment right to speak freely and communicate with Arizona voters. I will suffer the same restriction, deprivation, and loss of my free speech rights in my future campaigns as I did in the 2006 election due to the Act's matching funds provision. The specific operation of the Act in the 2006 that forced me to abide by the Act's expenditure limits is detailed in paragraphs 6 and 7 of this declaration.

6. In the general election I faced a government-funded democratic opponent. My Democratic opponent did not have any primary opposition, but still received both full cash disbursements under the Act, which is an amount equal to the Act's spending limit for the office of Treasurer, meaning she received $47,770 for the primary election and $71,655 for the general election – for a total of $119,425. Because my opponent did not have any primary opposition, she was able to use every dollar of her full, government-provided war chest against me in the general election.

7. In addition, the Act operated to provide my opponent with matching funds in the general

election as soon as my campaign raised an amount equal to my opponent's general election spending limit of $71,655. In other words, even though she had $119,425 to spend against me, she started receiving one dollar for every dollar I raised in private contributions over the spending limit of $71,655. Considering that matching funds would have flowed to my opponent up to two times her initial disbursement, if my campaign had not stopped its fundraising activities, she would have received a total of $214,965 for the general election (for a total of $262,735 to use against me once you include the primary funds in that total).

8. The only way I could avoid being massively outspent by my opponent was to prevent the triggering of additional matching funds to her campaign. Thus, I stopped accepting contributions to my campaign to make sure that I did not exceed the Act's expenditure limitations for the Treasurer's race, despite the fact that I wished to continue to collect contributions in order to communicate with the voters of this state. I wanted to reach more voters by expending such funds, had I been able to collect them. I was thus coerced into accepting the same limits as my government-funded opponent and yet I did not receive any of the benefits of being a government-funded candidate, such as the receipt of matching funds for independent expenditures that opposed my candidacy and the label "participating" or "clean" candidate.

9. As the Clean Elections Commission spends funds to promote the Clean Elections system, especially during election years, I have personally noticed that there is an increasing public perception that candidates who do not accept government funding are "dirty" candidates because they are not participating in the "clean" elections system. The label "non-participating" candidate punishes me, as a privately financed candidate, for doing nothing more than exercising my constitutional right to raise money to run for political office and to speak without government-imposed regulations and limits on my speech.

10. The Legislature's recent amendment to the Act appears to have mitigated to some extent one discrete problem for privately funded candidates facing a government-funded opponent who had no primary opposition. However, due to the dramatically increased spending limits and lump sum disbursements under the amended Act, I will face similar, and in effect, identical, burdens on my free speech rights in future campaigns as I have in the past under the so-called Clean Elections Act. I will be forced to abide by the Act's expenditure limits or risk being drastically outspent by my government-funded opponent(s). For example, the expenditure limits for Treasurer were nearly doubled so that the initial dispersement in the primary election is now $82,680 and the general election is $124,020. That means that there is a potentially a total public subsidy of $372,060 for each government-funded candidate for Treasurer in the

general election with up to the two times matching funds being available.

11. In light of the fact that my campaign will have to spend far more than a mere 6% of $372,060 in order to raise such a substantial sum of money, the fact is that absent such an excessive campaign any government-funded opponent in the Treasurer's race will always have more resources than a privately funded candidate – and the harder the privately financed candidate works the more the government-funded candidate will benefit.

12. Pursuant to 28 U.S.C. § 1746(2), I, Dean Martin, hereby declare under penalty of perjury under the laws of the United States and the State of Arizona that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Dean Martin
Dean Martin

EXECUTED ON
NOVEMBER 26, 2007

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Brennan Center for Justice

Money and Politics: The Good, The Bad, And The Ugly

Commentary

By Gov. Janet Napolitano (D-AZ)

– 04/10/08

Thank you for joining me this evening.

I want to thank the Brennan Center for the special honor of delivering this first "Living Constitution" lecture. I would also like to thank the group of Justice Brennan's former clerks who made this possible. It's always a challenge to be the first to do anything – especially when you're in a room full of lawyers and legal scholars who are, naturally, looking for some kind of precedent.

I've been asked to discuss how my experiences have shaped my views of the many dynamic and evolving ideas within the Constitution. Well, let me tell you: I had a lot of potential material for this. My professional life has given me plenty of experiences with the day-to-day application of the Constitution. I've dealt with constitutional issues as a lawyer in private practice, as a U.S. Attorney, and as a two-term Governor. As Arizona's Attorney General, I had the privilege of arguing a case before the U.S. Supreme

Court. Now, the judgment in that case didn't go our way. But we did get the votes of the two Arizona justices on the Court at the time, Justices O'Connor and Rehnquist – which makes me think we were on to something.

I'd like to speak tonight both as an attorney and as a person who has run for office. I want to address a constitutional issue that is both timely and dynamic: money in politics, and the public financing of elections. When you talk about a "Living Constitution," it hardly gets more alive than this. It's an issue that stands at the heart of the American people's concern with our political system today. It is also an issue on which the Constitution is largely silent. The Founders devised an ingenious system of government for the new nation. But, for better or for worse, the Constitution did not seem to anticipate at all what an American political system – as opposed to a government system – might look like. The rules for partisan politics, campaigns, and elections were left for the people to figure out later.

Reading the Constitution or the Federalist papers, it's clear the Framers saw the Republic as subject to a few big threats: the tyranny of a strong central government; the tyranny of the majority; or the menace of a foreign enemy. But if you ask Americans today what most threatens our democratic values, many will say that it is the special interests or the high-dollar donors – those who can play king- or queen-maker, can rent time at a candidate's ear, or can buy their ticket into an expensive fundraiser.

People worry that their votes are less important than someone's money. They hear, for instance, about pharmaceutical lobbies donating to campaigns, and then they see nothing getting done on health care. They observe powerful oil interests bankrolling candidates, and then see America make insufficient progress on energy.

I have seen the political process close up, and I can tell you that it's more complicated than that. But I can also tell you that there are real drawbacks to the current interplay between money and politics. Perhaps more than overt corruption, the current system breeds cynicism and apathy – two enemies of participatory democracy. If Americans feel like they don't have a voice, then all sorts of people – potential voters and potential candidates alike – don't get involved because they don't think they can matter. Important policy differences are obscured by the patina of campaign contributions. And candidates are forced into a never-ending cycle of fundraisers and chicken dinners, which, especially at the federal level, greatly favors incumbents over even the most worthy challengers.

You're never going to get money completely out of politics – but there is a better way to do it.

The voters of Arizona helped move in the right direction by voting for an initiative known as "Clean Elections" ten years ago. Under Clean Elections, Arizona is one of 14 states that have a form of direct public financing for candidates in some elections –

and is one of only two that has a comprehensive funding, fundraising and matching formula.

Let's begin with some Clean Elections 101.

It is a voluntary system. Candidates who choose to "run clean" receive full public funding for their campaigns if they agree to adhere to the fundraising schemata and the spending limits of the act. To qualify for public funding, clean candidates must collect a certain number of $5 contributions along with the nominating petitions signatures required of all candidates.

The number of $5 contributions required of candidates varies with the office sought: 200 for a legislative position, 4,000 for a gubernatorial candidates. Once candidates collect enough $5 contributions to qualify for funding, they turn this money over to the state's Clean Elections Commission. After the qualifying period is over, clean candidates may not accept any more private donations. From then on out, the campaign is publicly funded.

In the rules I ran under in 2006, a "clean" gubernatorial candidate received about $450,000 in public financing for the primary and about $680,000 for the general election. If my opponent had opted not to participate in clean elections, as a clean candidate, I would have received a "match" for every dollar my opponent spent beyond the initial limits, up to three times the original cap. For governor, this cap was roughly $3.4 million, including both the primary and general election. This matching formula creates an

interesting dynamic. In my 2002 race, my opponent, former Congressman Matt Salmon, did not run clean and spent a lot of time raising money the traditional way. In 2002, you may recall, President Bush was quite popular, and Matt invited the President to Phoenix to do a fundraiser, which was quite successful.

At the next debate, I pulled Matt aside and thanked him, because under the Clean Elections match, his event raised $750,000 for my campaign. I am quite certain that I am the only Democratic Governor in the country for whom George Bush has held a fundraiser.

Where does the money for Clean Elections come from? None of it comes from the state's General Fund. Instead, almost two thirds of Clean Election funding derives from surcharges on civil penalties and criminal fines like parking tickets, and about one third comes from voluntary check-offs on the state's tax return. Arizona is a place of tremendous growth and dynamism, which gives us big challenges, but even bigger opportunities. These elements of Arizona are on display in our Clean Elections law.

It is a good example of the tremendous success, frustrating shortcomings, and intense acrimony – the good, the bad, and the ugly – that come with any good frontier.

Let's start tonight with the good. I strongly believe in the principle of public financing. It's opened up the

political process for thousands of voters and encouraged more people to get involved as candidates.

To look at the upside of public financing, you have to be realistic about what it can do. Public financing does not – and cannot – get the money completely out of campaigns. You need money to reach voters and inform them of where you stand. Try doing that on a shoestring.

Apart from this basic necessity, there's this fact:

When it comes down to it, people who want to contribute lots of money to causes they care about will find some way to do it. Our Clean Elections system in Arizona, for instance, effectively limits individual contributions to campaigns to $5. But a Clean Elections candidate always runs the risk of an opponent who can simply self-fund at an unlimited level. Moreover, anyone can give a lot of money to political causes simply by donating to the state political party, an advocacy organization, or an independent expenditure committee. Everyone should be familiar with this phenomenon. In 2004, we saw it on a national level, when donors responded to new campaign finance laws by funding 527 groups, which are much less regulated than campaigns or political action committees.

I strongly believe that these types of organizations should be held to strict and more timely reporting requirements for income and expenditures, so that voters can see what's going on. These would be positive steps, considering the fact that independent

expenditure committees and 527s are going to be with us for a very long time.

Public financing will not rid politics of money. What public financing can do is make the role of money in politics more equitable and more transparent. Public financing helps erase the big mysteries about campaign funding – it takes away the question of who the big donors are, and requires clear reporting of expenditures and incomes. It also levels the field for candidates in a way that breathes life into grassroots democracy.

Clean Elections has led to a different type of campaign: As a candidate, you focus on meeting voters, instead of dialing for dollars.

I ran for Attorney General in 1998, before the Clean Elections system was passed. I've successfully run for Governor twice – in 2002 and 2006 – as a Clean Elections candidate, choosing a clean campaign over a traditionally financed run. I can tell you: The system makes a world of difference.

In my Attorney General campaign, I spent a lot of time talking to donors just so I could have the resources to get my name out there. Running for Governor, I spent a lot less time doing that, and a lot more time talking to voters. In 2006, I collected 10,000 of the $5 contributions I needed to qualify for public funds. Compare that to the fewer than 3,000 donors I had while running for Attorney General without public financing.

Talk about opening the process up to more people. It gives voters a sense of ownership in the campaign – and they know their portion isn't bigger or smaller than anyone else's.

In this way, people giving their $5 have a lot in common with the everyday people who've formed the base of recent presidential campaigns built on small donors – such as Barack Obama's campaign. Everyone can play, and Obama's supporters know that their support lets the candidate bypass the influences that make many people cynical about politics. People can take ownership in the campaign and know their voices matter.

But you shouldn't have the benefit from a once-in-a-generation presidential candidates armed with a world-class Internet fundraising operation to foster this kind of democratic participation. Public financing allows a similar sense of citizen ownership – the feeling that everyone can play – across all levels of campaigning, even without the public limelight surrounding Obama.

As a candidate, I vastly prefer the Clean Elections model. I get to spend a lot more time talking to everyday Arizonans about the issues facing them during "$5 parties," which are common in clean campaigns. These events range from neighborhood dessert parties held in someone's living room to a hike put together by grassroots supporters and led by the candidate. To me, this is what campaigns are really about – bringing together the people you want to

represent, talking about important issues, and rallying behind common cause.

Public financing is also a good way to rein in expensive contests. In Arizona, Clean Elections has kept the cost of running way down. Candidates' ideas aren't inhibited by the obstacles of a big-money campaign, and instead compete on level ground.

Just look at the numbers. My 2006 campaign received $1.3 million in public funds, and my opponent got about the same amounts. So, together, we spent about two and a half million dollars in that Governors' race. Now look at another statewide contest in Arizona that wasn't eligible for public financing – the race for U.S. Senate. Combined, the two candidates spent nearly $30 million. Same year, same voters – but Clean Elections cut the cost of running by more than 90 percent. When you make it cheaper to run, you democratize the process. This is also true of what kind of people end up running with public financing in place.

Clean Elections has opened the doors for many more people to run for office in Arizona, because you don't have to worry about a money advantage. We've seen a 35 percent increase in the number of candidates running for Clean Elections-eligible offices from 1998 to 2006. Clean Elections, combined with term limits, has brought us a 140 percent increase in the number of contested state Senate races. Only 10 of our 30 state Senate districts were contested in 1998 – 24 of

them were in 2006. This kind of competition is a sign of a robust democracy.

And better yet, Clean Elections candidates are winning. Forty-seven percent of all state and legislative offices are now held by candidates who ran clean, including 9 of 11 statewide office. In 2006, 38 of the 90 legislators elected were Clean Elections candidates – including nearly half the House of Representatives. And clean candidates come from both major parties. Of the 47 clean candidates elected in 2006, 21 were Republicans and 26 were Democrats. In 2004, it was 28 Republicans and 18 Democrats. So public financing is far from a Democratic Party plot. It's a boon for all sorts of candidates.

So we can see all the great benefits of the Clean Elections system, and how they enhance some of the living, evolving democratic ideals that go back to the founding of our country. But there's another side to this system – some problems that we can call "the bad."

Public financing in Arizona is relatively new, which means there are real glitches that still have to be figured out.

First, let's talk about the amount candidates get to run. Through the base amount given to Clean Elections candidates, as well as through matching funds generated by independent expenditures made against me, I received $1.3 million in 2006. That's not a whole lot – but in comparison, candidates for other statewide offices received a pittance. Candidates for

Attorney General and Secretary of State received only about a quarter-million dollars to reach the same number of voters. Candidates for other statewide offices like Treasurer and Superintendent of Public Instruction received even less.

This problem was even worse in state legislative races. Clean legislative candidates do win, but many are hampered by the paltry amount the Clean Elections system gives to them – in 2006, about $29,000 for districts that have, on average, about 100,000 voters. I signed a bill last year that raised these limits by marginal amounts, but the numbers are still far too low.

One benefit of Clean Elections is keeping down the cost of running – but you have to make some concessions to reality and provide enough money through public financing to actually reach voters. And if you keep the maximum donation very low, you also accelerate that flow of money to the other organizations, which I spoke about earlier – a phenomenon that's unavoidable, but should be controlled for the sake of transparency.

There's also a cumbersome bureaucracy that faces Clean Elections candidates. Especially for first-time candidates, this can make running for office frustrating and confusing.

The fundamental problem with our Clean Elections law is that it was written by people who had never run a campaign before. This issue is compounded by the fact that anybody can file a complaint against a

campaign. This overbroad idea of standing leads to some frivolous charges, meant to score political points and eat up an opposing candidate's time.

And once your complaint is heard, judgment can be a crapshoot. The Clean Elections Commission is new, and doesn't have much precedent to go on – so its rulings can arbitrary.

And too often, its decisions are split according to the partisan ties of the commission members.

For a candidate, the consequences are potentially grave. If you spend money outside the law's limits, the Commission can fine the candidate – not the campaign, the *candidate* – up to 10 times the amount of the alleged infraction. In one case, the Clean Elections Commission removed a state legislator from office due to some serious breaches in the campaign that got him elected to his seat. I don't mean to say those penalties are never appropriate. But combining potentially stiff sanctions with unpredictable decision making does not make for confidence in the system.

Worse yet, the law's requirements don't match up with how campaigns – or, for that matter, businesses – actually function.

You can get caught up in a deep and inescapable Clean Elections bureaucracy for some pretty silly reasons.

Here's an example from my last campaign. Early in the running, we launched a web site and signed a contract to pay a monthly fee to our web site vendor.

But our opponent filed a complaint alleging that we didn't have sufficient funds on day one to pay the vendor's full contract – even though the idea, common to campaigns and to business, was to pay over time.

The complaint was ultimately dismissed, but only after a six-month audit that tied up campaign staff and resources, and which generated headlines – exactly what my opponent wanted.

This is not to complain about the ultimate result – after all, I prevailed on the complaint, and I won the election.

But in a different situation, this could have made a big difference on the outcome of a campaign. The Commission doesn't provide a perfect avenue for recourse – it can make decisions on instinct, rather than precedent; it can act too slowly; and it can apply its force unevenly. You can see flaws in the Clean Elections system that dampen the many benefits I spoke about earlier. After those stellar upsides I pointed to, you may wonder why not all Arizona candidates were running clean. Well, flaws like these are a big reason.

So we have that balance between the good and the bad. I believe that balance weighs toward the good. Now if I can discuss the acrimony and the litigation surrounding public financing – a.k.a., the "ugly" – and also, what we may be able to do to get past it.

We've seen multiple legal challenges to Arizona's system, many of them based in fundamental constitutional questions. The Brennan Center is a veteran of these cases, and has dedicated a truly admirable amount of energy to support public financing in Arizona. I want to take this moment to recognize all the important work that the Brennan Center has done to preserve this system.

The challenges, faced by the Brennan Center and others, often strike at the core of important Constitutional questions, and attempt to pit campaign finance reform against free speech. One of the basic questions that always arises when you limit campaign contributions is a familiar one that we recognize from *Buckley v. Valeo*: What about a person's right to express him or herself by donating a fortune to a candidate?

My perception of what our Constitutional principles mean today has changed with my experience as a candidate. Anyone who thinks that the marketplace of ideas is hurt by public financing should just take a look at how many people get involved under a public financing system in Arizona. In my state, the political discourse is more lively and robust *because* of public financing. In a system that values everybody's voice, you get many different types of candidates putting their ideas before voters, and a lot of people expressing themselves at a grassroots level.

Ugly legal battles are part and parcel of any new, pioneering system. But Clean Elections is not perfect,

and has some ugliness that I think we can act to expunge.

So, I'd like to close with a call to action aimed at maximizing the good, minimizing the bad, and getting around the ugly:

In public financing, Arizona has done its job as a laboratory of democracy. We've seen enough positive results to broaden the experiment. In my state, you have a real-life public financing system that has changed the landscape of politics.

My suggestion to the students and scholars here today is: Use the Arizona example to create a model code for public financing, which could be used by other states and the federal government Like I said earlier, Americans are worried about money in politics. Yet too few states have public financing, and presidential candidates are stepping away from using public money in their elections.

In our Arizona test case, you can see what has worked and what hasn't, and you can move forward from there. When discussing a "Living Constitution," it can be easy to talk in just terms of big principles. But particulars matter. The details are often at the heart of putting those big ideas to work – and this is very true in public financing.

If we can work through these particulars, we can give candidates a way to run for office that's equitable and transparent. Greater use of public financing can give citizens a greater voice, and greater confidence, in our

democratic system. I urge you to go forward, take a realistic approach to the problem of money in politics, and to contribute in this meaningful way to our nation's evolving campaign finance laws – and to do so in real time.

Aim to have a model code for states to emulate before the election of 2012 – the next presidential election and the first general election after the next census and reapportionment.

If you do this, and if states and the federal government adopt your recommendations, you will have contributed in a meaningful way to the electoral framework underlying our democracy. And that, my friends is a legacy that Brennan Center could be very proud of.

Thank you.

U.S. District Court for the District of Arizona

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[Title Omitted In Printing]

Gaming Arizona: Public Money and Shifting Candidate Strategies

Michael Miller, *Cornell University*

***Michael Miller** is a Ph.D. candidate in the department of government at Cornell University. His dissertation examines the manner in which public election financing alters campaign dynamics, citizen engagement, and political participation. He can be reached at mgm44@cornell.edu.*

Since public election financing was first implemented during the wave of post-Watergate reforms, the burning question has been, "does it work?" Evaluations of public financing have focused on its primary objectives, which are designed to address familiar grievances: Elections are too expensive and not competitive enough. Corporate PACs and other "special interests" contribute disproportionately to incumbents because they are interested in purchasing influence. Candidates must devote so much time to fundraising that little is left for other campaign tasks. Lost in these considerations, however, is the fact that mandated financial parity changes the strategic environment candidates function in, altering their decision making and potentially changing the nature of elections. As fully subsidized elections gain increasing

ubiquity in the United States, reformers must decide whether this is a cost worth bearing.[4]

Given its status as the most generously funded system of public election finance, Arizona is an ideal location to look to for unintended consequences. Some states, such as Hawaii and Wisconsin, have long employed public financing schemes with subsidies that partially cover the cost of a campaign, but Arizona's Citizens' Clean Elections system fully funds eligible candidates. Passed as a public ballot initiative in 1998, the Citizens' Clean Elections Act was implemented in time for the 2000 election. As it is in all subsidized programs in the post-*Buckley* regulatory environment, participation in Clean Elections is voluntary. However, participating candidates agree to abide by strict spending limits. Legislative candidates are provided with a subsidy equal to the spending limit, so long as they are able to demonstrate viability by successfully soliciting at least 210 contributions of exactly five dollars.[5] In other words, by accepting public financing, candidates agree to forego any additional sources of finance and to spend only the sum of the grant.

Subsidies covering the entire cost of a campaign are themselves unique, but the availability of matching funds marks the Arizona system as a paragon of generosity. Matching funds allocations are grants given to participating candidates when they are outspent; the extra subsidies mandate financial parity even when not all actors participate in the program. In primary elections, matching funds are triggered

when money is spent. In general elections, participating candidates are matched when either their opponent raises money or an independent expenditure is made.[3] In either instance, expenditures beyond the publicly financed candidate's subsidy amount are matched dollar for dollar to an aggregate limit of three times the original allocation. From the perspective of a non-participating candidate, once the original subsidy threshold is breached, a dollar spent is in effect a dollar contributed to the other side. The importance of matching funds is perhaps best understood by an example of publicly funded candidates in partially and fully funded states running against an opponent who raises and spends $75,000 (Table 1). In a system of partial funding, in which a candidate receives a subsidy equivalent to 45% of the spending limit (as is the case in Wisconsin), a publicly funded candidate would still be facing a spending deficit of nearly $64,000.[4] In Arizona's Clean Elections system, however, opponent's expenditures would trigger matching funds allocations, preserving funding equality.

The elimination of the funding gap is the keystone of Clean Elections's promise. Arizona's program diverges from previous attempts at public financing, which have employed only partial subsidies and have been far from overwhelmingly successful. Partial subsidies have proven ineffective in slowing spending inflation in New York City municipal elections (Kraus 2006) and Minnesota state campaigns (Schultz 2002), but have shown some promise in Wisconsin (Mayer and Wood 1995). In terms of enhanced competition,

13 years of gubernatorial elections from 1983 to 1996 yielded no measurable difference in competition levels of publicly-financed elections compared to those funded by private sources (Malbin and Gais 1998, 136). Two studies have found little change in competitiveness for legislative candidates in Wisconsin (Mayer and Wood 1995) or Minnesota (Jones and Borris 1985). However, a subsequent examination of Minnesota races found significant relationships between public money receipts and challenger vote totals, indicating a positive relationship between subsidies and competitiveness (Donnay and Ramsden 1995). As to the effectiveness of public money in diminishing the role of special interests, an early look at Minnesota found that public funds had helped individual interests (private contributors) to gain an aggregate dollar advantage over special interests (Jones and Borris 1985). Seventeen years later, however, Schultz (2002) found that Minnesota's PACs simply channeled their money through soft money and lobbyists, resulting in little net difference.

While it is unclear whether partial subsidies have had any real effect, it is worth noting that the basic candidate experience in those systems remains relatively unchanged. Candidates in partial funding systems still must raise money from external sources, and given the well-documented funding gap between challengers and incumbents (e.g., Herrnson 2004, 160; Cassie and Breaux 1998), it should not be terribly surprising if the former still find themselves well behind on Election Day. Clean Elections, however, not

only removes fundraising from the candidate experience with full subsidies, but the matching funds provision also means that participating candidates can be outspent in only the most exceptional cases. A guarantee of adequate funding, combined with mandated financial parity between participating and nonparticipating candidates, makes Clean Elections an entirely different policy. Compared to evaluations of its predecessors, studies of Clean Elections have been markedly positive, even if the program's youth has precluded broad study. A 2002 General Accounting Office study was cautiously optimistic as to the law's effectiveness (General Accounting Office 2003). Four years later, Mayer, Werner, and Williams (2006) concluded that Clean Elections has indeed enhanced competition. Francia and Herrnson (2003) found that candidates accepting full public subsidies devoted significantly less time to raising money than candidates in other states employing more traditional funding mechanisms, including partial public assistance.

For all the apparent success of the program to date, there is a vast potential for unintended consequences that must be considered. The enhanced availability of money alone is sufficient to change tactical considerations of candidate entry, but the generous matching funds provision leads to altered campaign strategy and spending patterns of Arizona's privately financed candidates. In short, nonparticipating candidates in Arizona are using matching funds to achieve maximum financial advantage, shifting traditional conceptions of campaign strategy as they modify their

spending patterns to minimize the impact of "clean" money. The resulting environment may undermine the spirit of the law itself. While Clean Elections may well have achieved some of its stated objectives, for better or worse, the law has fundamentally changed campaign strategy in the Grand Canyon State. As an increasing number of states and municipalities move toward full funding, the experience of Arizona in this regard is worth noting.

Data and Methodology

Arizona's liberal matching funds allocations make it the ideal case for analysis. If matching funds have resulted in a different sort of campaign, then it is reasonable to expect that the effect is most detectable there. I sent electronic and paper surveys to all registered primary candidates for legislative office in the 2006 Arizona election.[5] Of 186 registered candidates, I received 69 responses, for an overall response rate of 37.1%. This response rate is lower than the customary level for survey research, but it is consistent with previous surveys of elite candidate populations (e.g., Francia and Herrnson 2003; Howell 1982). Given the challenges of its relatively small size, the interview sample presents a reasonable approximation of the general candidate population with the exception of Democrats and Republicans being over- and under-represented, respectively (Table 2).

I designed the initial round of surveys to capture information regarding campaign time usage and

overall candidate attitudes. However, a number of candidates wrote notes expressing concern that the original survey was not capturing unintended consequences of the Clean Elections law. I therefore resolicited the respondent sample for personal interviews, and 16 of the original survey respondents agreed to move to the second phase of the study, discussing their experiences in recorded interviews collected in person at locations throughout Arizona.[6] I transcribed responses and coded for strategic and emotional concerns. I obtained data on matching funds distributions from the Citizens' Clean Elections Commission, Arizona's public funding regulatory agency.

Shifting Strategies

Nonparticipating (traditional) candidates must pay careful attention to expenditure levels so as not to benefit a publicly funded opponent. One traditional candidate described a campaign that was "very calculating in how much we sent out to keep spending as low as possible" in an effort to mitigate this effect. Another traditionally funded incumbent reached the same conclusion, saying, "If I raised $100,000 and he capped out at $69,000 that would give me a $30,000 advantage. I don't know that I could raise that much, so I think we would probably be equal. I would spend a lot of time and money raising that money . . . just (to) give it to him." Still another incumbent clearly articulated the degree to which matching funds call for careful attention to spending:

> I don't want to raise money and give my opponent money. If I can keep the spending down, me as an incumbent, I have a tremendous advantage . . . If I am a traditional candidate, and I raise $50,000, *he's* going to get that money, and he's going to use it to get more voters out. So I'm getting advice from both camps now. I'm getting advice that says "you need to raise $100,000, because you need to get your message out, you need to get your voters out," and I hear the other people are saying "you need to go clean, because you don't need to be raising money for him, and in a low spending race, it's you as an incumbent that has the advantage."

The desire for cost efficiency is present in all campaigns, but the effects of matching funds shift the spending calculus well beyond simple husbandry. While all traditional candidates interviewed expressed concern about the effect of matching funds on their opponents, some described conscious decisions to withhold expenditures for items that may have increased their performance at the polls:

> Every dollar I spend over the threshold starts feeding the alligator trying to eat me. So I have to be very careful with how I spend money, which meant that I sent out a lot less mail and held a lot less events than I would have but for my hands feeling like they were tied under this system. That really irritated me, because I'd say "I'd love to rent a big tent, and we'll have an old-fashioned ice cream sundae thing in the park" or

> whatever, but I didn't want to do it unless everything was absolutely essential so that we didn't trigger more money to our opponent. Quite honestly, I would have sent probably twice as much mail.

Stories like this one were echoed by *every* candidate who had ever run traditionally against a Clean Elections opponent. One challenger who ran with public money observed that "those who want to go for the hundred thousand dollar campaign, they're not so sure they want to do it because they don't want to give me matching funds. I'm sure that they don't want a level playing field." Another challenger noticed that her traditionally financed opponent had stopped spending in order to avoid triggering matching funds: "He spent just the amount in the general election to avoid having to give me matching money."

While traditional candidates ponder the advantage of *not* spending, those who accept public subsidies care little if their opponents spend large sums because they are protected by matching funds. When asked whether he would take issue with his opponent spending $75,000 against him, a first time challenger in a long-shot race said, "That would be O.K., because I like the matching funds clause. If my opponent wants to go raise traditional funds so I can get more money to spend for my campaign, I think I'm fine with it." However, there is a great deal of anxiety among participating candidates regarding the timing of opponent expenditures. One newly elected legislator, fresh from a tough fight in the general election,

echoed the sentiments of the others, but added an important clause (emphasis added):

> I think in some ways (my opponent) does think about (the effects of matching funds), and he limited his fundraising. I only got $2,500 in matching funds because of that. And he had a primary, and his one opponent was Clean Elections, and the other two were traditional, and the other two raised money like they were running a traditional campaign, not realizing that it impacted the Clean Elections candidate in huge ways. That Clean Elections candidate got huge amounts of money. *But they wait until the last minute and spend it*, to avoid that.

The belief in the existence of strategic expenditure timing is ubiquitous. According to *every informant I interviewed*, traditionally funded candidates try to maximize the competitive effect of the money that they do spend by releasing funds at the last moment, giving the Clean Elections candidate little time to react. Traditional candidates conceded that while the timing of expenditures was not an initial component of their strategy, by the end, it was crucial in maintaining control of the political message. So, while late spending "[was not] like a Manhattan plan or anything, [it] was part of our thinking . . . let's spend as little as possible early on, so that we could control the debate." By releasing a mailing on the Friday before the election, traditional candidates are aware that even if their opponent is matched on the same day, it

is prohibitively difficult to spend money over the final weekend in any meaningful fashion.

One experienced candidate described how traditional candidates maximize their strategic advantage: "You want to have a strategy and a plan of using those funds so that the matching funds are least beneficial to your opponent. In most cases you would think that that's at the last second, so they can't counter it. I think there's benefit to that. I think that's wise." An incumbent who funded her campaign traditionally said, "We . . . think about [spending at the last minute], frankly. At least I do. Sometimes we may have planned what we're going to do, but we don't initiate anything, because the minute we sign a contract or the minute we initiate anything, we have to report." Other candidates detailed how one can "really . . . work the system" by "spend[ing] money at the last minute if you're a traditional candidate . . . the clean candidate gets that money, that match, the day before the election." An incumbent with multiple cycles of election experience described this phenomenon:

> In terms of opponents incurring expenditures right before the elections, you know, the Friday before, that's happened both times that I've ran. And so you pick up a check from the Clean Elections department, you know, that Friday night, for the matching money, good luck trying to spend $5,000. So that has definitely played into most campaigns now, you know, people know that if you are going to go over the expenditure limit, you do it that weekend before.

Yet another legislator noted that campaign strategy has fundamentally changed as candidates play this game with ubiquity:

> If a traditional candidate waits towards the end, and has some expenses that go over the limits, then the Clean Elections candidate gets matching funds, but if you do that farther down the road and the clean candidate doesn't know about it, then she's not going to have much time to plan how to spend that money, so there's some strategic advantages that a traditional candidate has. It would not be an exaggeration to say the Clean Elections is shifting strategic considerations.

Available data supports the existence of this trend.[7] As Table 3 indicates, in no election since 2002 has the proportion of matching funds expenditures released in the last week of a cycle fallen below one-third. Some of this activity is attributable to the natural flow of campaign spending, but if the traditionally financed candidates who trigger matching funds allocations are as conscious of the effects of their speeding as they seem to be, a substantial portion of late spending is delayed to maximize its strategic effect. Further, matching funds allocations within one day of the election generally comprise a substantial percentage of overall "last-minute" expenditures. In the 2006 general election, which the informants participated in, over 40% of expenditures occurring in the last week were released just hours before the polls opened. The majority of these matching funds allocations are no doubt resultant

of strategic expenditure as traditional candidates and outside entities seek to gain favor with the electorate while leaving the publicly funded candidate little or no opportunity to respond.

Traditional candidates who purposely spend late have little sympathy for their publicly funded opponents, viewing a failure to adequately prepare for the expenditures on the final weekend as a lapse in proper planning. One legislator who had run as a traditional candidate described the importance of a prefabricated plan for publicly funded candidates to deal with late spending, saying, "I think I'm a good enough campaigner and strategist to figure that out." Some Clean Elections candidates who actually faced this situation effectively anticipated late expenditures, and took steps to respond. One incumbent who had been the victim of last-minute attacks by traditionally funded candidates in the past behaved differently the next time, saying, "I got smarter the second time around . . . thinking that our opponent would probably spend, and (I) had a strategy ready to go on how we could spend that money quickly if we got matched." Another experienced candidate said that when independent groups spent money against her in the closing weeks, she was ready to respond by hiring a group of people willing and able to walk on her behalf:

> In my last race, every other day there was a hit piece. Every other day I would get matching funds. What do you do when you get $4,000 right before the election? If you're

> smart, you have a strategy, and you think, "O.K. if I get $4,000 two weeks out, I'm doing this." If I get it right before the election, I'm doing something else. I'd already preplanned that I would hire union people who were out of work to work on Election Day for me, because it was something that represented my values, and was a financially prudent thing to do.

The expectation of strategically timed spending was not limited to those with political experience. One first-time candidate in a crowded primary field had heard the stories of last-minute spending in other races, but had failed to assemble a formal response plan. However, the possibility of spending during the final weekend was present in the back of his mind, and he was able to mount an effective counterattack in the last moments of an ultimately unsuccessful campaign. In his case, it was an independent group, and not the opposition, that released funds with only days remaining before the election:

> I was attacked by a group . . . they put out a hit piece. I was able to use that immediately to get myself qualified for another $3,000 worth of money to send out my own extra last minute piece, which was a really good one actually . . . I barely had time to respond. I had run out of money, because that's what happens. I really wanted to do another piece, but I just couldn't budget for it. So I had a couple of ideas sitting on the back burner, and then it just happened.

Despite the preparedness of some of their peers, many publicly funded candidates were not so savvy, and were caught unaware. Another first-time challenger described feelings of helplessness accompanying the realization that large amounts of money had been spent against him at the last minute, leaving him with matching funds but no time to spend them:

> The last day, or the day before the election, they do all this stuff, and you don't really have time to plan real well. I could do better if I did it a second time. As a matter of fact, I gave some money back, because I got five or six thousand dollars the last day. The traditional people, they do that so well. Some people said "you should do something" and I said I can't use it effectively, and I'll give it back.

Another neophyte faced a similar situation, confronting feelings of disappointment with a system that was supposed to guarantee an even playing field. Outspent at the last minute, she was unable to respond, and faced the reality that despite her expectation of financial parity, she had been outflanked in the election's closing hours:

> I believe [my opponent] spent a great deal of money in the time after the last reporting of expenses and income, so that I wouldn't have to balance, so that they wouldn't have to balance how much money I had with how much she had. You can't plan; you can't buy the media if you don't know what they're going to do. It would happen in a regular campaign

> anyway, but to be on the same playing field, we're not, because Clean Elections candidates are guaranteed this amount of money and the others are not, but if they get to this amount or higher, we'll raise the bar. And they can eventually outspend you. That's not fair.

Discussion

The allusion to fairness in the passage above is an important one. From the perspective of participating candidates, Arizona's Clean Elections system was supposed to move away from politics as usual to something better, empowering challengers with adequate resources while mandating financial equality among all contenders. However, while the matching funds provision has supposedly eliminated the financial gap between political haves and have-nots, an emotive gap remains. Traditional candidates view themselves as in control and on the offensive. They take a cool view of the shifting timing of campaign spending, describing strategic expenditures with such words as "smart," "well-thought," and "wise." There is a universal recognition among them that when it comes to spending, later is almost always better.

Publicly funded candidates play defense, powerless to behave proactively and forced to guess when the opposition will make a move. Challengers in particular know that if they are to swing votes in their favor, they must be able to spend money. Withholding expenditures until the final days of an election cycle allows traditional candidates to effectively

control the funding of their opponents, and given little time to respond, publicly funded candidates can be left holding the bag. These candidates, and particularly those running their first campaigns, report feelings of frustration and anxiety stemming from participation in a system that they believe falls short of its promised goal of "fairness."

Despite an emotional difference between the two groups, when traditional candidates directly face participating candidates, neither is fully in control. Once they near the spending limit, nonparticipating candidates subvert their expenditure instinct to the realities of matching funds, suppressing spending and/or fundraising so as to avoid the issuance of a check to their opponent. While they may have the resources to hold an ice cream social, the benefit must be weighed against the cost of bolstering the opposition. Participating candidates wring their hands in anticipation of strategically timed last minute expenditures, often unable to preempt such moves with activity of their own because, in the last stages of an election, they themselves have reached the spending limit. Indeed, when the ability of outside groups to trigger matching funds allocations is considered, it can be said that even candidates running in elections in which all participants are publicly financed experience a great deal of strategic uncertainty.

Clean Elections may well be stimulating electoral competition in Arizona, but faced with shifting incentive structures, political costs, and opportunities, candidates there operate in a strategic environment that

is fundamentally different from most of the rest of America. Public funding holds the potential to facilitate higher levels of financial equality among candidates, but while the money certainly helps, a subsidy alone is no panacea. In accepting financial assistance, candidates have given up control of their financial destiny and have acceded to conditions favoring both a flurry of last-minute campaigning and a depression in general campaign activity. These shifting strategies change not only the way in which candidates interact with each other, but also the manner in which they communicate with the electorate. If late activity becomes more ubiquitous, participating candidates are bound to catch on, and candidates on both sides of the public funding divide will hold money back to engage in last-minute point and counterpoint. Such a pattern may have broader impacts on voter perception and citizen mobilization as well.

The findings presented here have implications that reach well beyond Arizona's borders. Like Arizona, Maine implemented a voter-initiated program in the 2000 election, and has been offering full subsidies ever since. New Mexico opted for similar reforms for its Public Regulation Commission candidates in 2003, and the following year, North Carolina implemented full funding for judicial candidates. In 2008, Connecticut will begin offering full public subsidies in state elections, while New Jersey may expand its legislative program beyond a pilot stage. Public funding has also become a hot topic at the municipal level; Albuquerque and Portland have recently passed full

funding laws and at least a dozen other cities are considering them. With the Democratic takeover of Congress in the 2006 midterm elections, discussion of public funding of congressional campaigns has also become more widespread in Washington. The trend in public funding is clear: full funding is the future. However, while the goals of public election funding are noble, they will not be implemented in a strategic vacuum. If matching funds provisions will be part of the next stage of campaign finance reforms, their practical ramifications on candidates and campaigns must be considered.

Table 1
Public Funding Scenarios

Funding Mechanism	Opponent Spending	Spending Limit	Subsidy Amount	Matching Funds	Funding Gap
Clean Elections	$75,000	$25,000	$25,000	$50,000	$0
Partial Funding	$75,000	$25,000	$11,250	—	$63,750

Table 2
Representativeness of Candidate Sample

	Population	Survey Sample	Interview Sample
Democrats	34.0	39.7	62.5
Republicans	58.7	52.9	37.5
Chailengers	26.3	44.1	31.25
Incumbents	32.0	30.9	43.75
Open Seats	41.7	25	31.25
Primary Winners	77.4	80.8	87.5
Accepted Clean Elections Funds	60	67.6	75.0

Table 3
Timing of Matching Funds Allocations, 2002-2006

	Primary Election			General Election		
Year	Matching Funds Allocations	Matching Fund Allocations Within One Week of Election	Allocations Within One Day of Election (Percentage of Last Week Allocations)	Matching Funds Allocations	Matching Fund Allocations Within One Week of Election	Allocations Within One Day of Election (Percentage of Last Week Allocations)
2006	95	48 (50.5%)	19 (20.8%)	124	44 (35.5%)	18 (40.1%)
2004	120	54 (45%)	11 (20.4%)	124	56 (45.2%)	6 (10.7%)
2002	119	50 (42%)	38 (76%)	107	69 (64.5%)	22 (31.9%)

Notes

* The author acknowledges Peter Enns, Theodore Lowi, Sherry Martin, Walter Mebane, and two anonymous reviewers for advice. I would also like to thank the department of government at Cornell University for financial support of data collection, and two great friends, Nicholas and Angie Behm, for allowing me to use their home as a base of operations in Phoenix.

[1] Nearly half of the states currently employ public funding in some form. Partial subsidies (those covering a percentage of campaign expenses) have been commonplace since post-Watergate reforms, but with the exception of the presidential general election program, full public financing has been deployed only since 2000. In 2008, full funding will be utilized in at least some elections in six states and two major metropolitan areas.

[2] Candidates for all state offices are eligible for Clean Elections funds, and the entry requirements vary with office. In the 2006 election, spending limits for legislative candidates were $17,918 for the general election and $11,945 for the primary.

[3] Like many states, a majority of Arizona's legislative districts are noncompetitive, and the decisive campaign is often the primary. In 2006, for example, 17 of 30 senatorial candidates received more than 60% of the vote in the general election. Here, I interview primary candidates, although it is apparent that traditional candidates approach primary and general election strategy similarly despite the difference in the matching fund trigger mechanism.

[4] In the case of Wisconsin, spending limits only apply if all candidates in a race accept public funding.

[5] I chose legislative candidates because of their large number in comparison to candidates for statewide offices.

[6] Ten were winners, 10 were Democrats, and 12 were Clean Elections candidates.

[7] I obtained data from the Arizona Citizens' Clean Elections Commission. Data from the 2000 election were unavailable.

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U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

Exhibit A

Equality Arizona
www.equalityarizona.org

FOR IMMEDIATE RELEASE
August 7, 2008

Contact: Sam Holdren
samh@equalityarizona.org
(602) 650-0900 office
(602) 384-1864 mobile

Equality Arizona applauds conservative candidate's commitment to work with a leader of the lesbian, gay, bisexual and transgender community

Phoenix, Ariz. – In a recent campaign stop, State Representative Eddie Farnsworth (R-22) – who is currently campaigning for District 22's Senate seat – touted his record of "crossing the aisle" while in the Arizona House of Representatives, and promised to continue to do so if elected to the Arizona Senate. In particular, Rep. Farnsworth cited his work with our own Kyrsten Sinema (D-15), who is running for re-election to the Arizona House of Representatives.

While Equality Arizona has had strong differences with Rep. Farnsworth in the past, Equality Arizona supports Rep. Farnsworth's commitment to work with

lesbian, gay, bisexual and transgender community leaders like Sinema. In 2006, Sinema was the Chair of Arizona Together, the group that led the campaign to defeat Prop. 107 (which attempted to amend the Arizona Constitution to ban same-sex marriages even though they are already illegal under Arizona law).

As everyone knows, this issue will again appear on the ballot (this time as Prop. 102). In collaboration with lesbian, gay, bisexual, transgender and allied organizations and individuals from all across Arizona, Equality Arizona is again committed to ensuring that discrimination is not enshrined in the Arizona Constitution. Help our elected officials understand that "No" means "No," and support the effort to defeat Proposition 102 this November.

Please visit the campaign website at http://www.votenoprop102.com/ today to sign-up for volunteer opportunities, to donate, and to share your stories of how you are working to defeat Prop 102.

###

Equality Arizona recognizes the value of our progressive partners as we all march on the path toward equality. *The mission of Equality Arizona is to secure, protect and defend the rights and welfare of lesbian, gay, bisexual, and transgender (LGBT) people in Arizona.*

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

[Title Omitted In Printing]

State of Arizona

[SEAL]

Campaign Finance Report

Bouie for State Representative
Committee #: 200810141

Treasurer: Bouie, Allison Joy
3434 W Anthem Way, Ste 118-493,
Anthem, AZ 85086
Phone: (623) 551-7557
Email: campaign@tonybouie.com
Candidate Name: Bouie, Tony Vanderson
Office Sought: State Representative – District 6

2008 Pre-Primary Election Report

Election Cycle:	2007-2008
Date Filed:	August 21, 2008
Reporting Period:	June 1, 2008-August 13, 2008

Summary of Finances

Cash Balance at Beginning of Reporting Period:	$3,642.61
Total Cash Receipts this Reporting Period:	$31,199.20
Total Cash Disbursements this Reporting Period:	$24,309.57

Cash Balance at End of Reporting Period: $10,532.24

Report ID: 42998

Name: **Address:** **Category:** **Memo:**	Denny's 3160 W. Carefree Hwy, Phoenix, AZ 85086 Event Expenses – Food/ refreshments Deb. Vandenboom (sp) Meeting	8/13/2008	$5.00 Cash	$5.00
Total of Operating Expenses			$31,309.57	
Total of Refunds, Rebates, and Credits Received			$0.00	
Net Total of Operating Expenses			$31,309.57	

U.S. District Court for the District of Arizona

(Filed Sep. 23, 2008)

[Title Omitted In Printing]

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Tanja K. Shipman (025205)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308

Attorneys for Defendants Secretary of State Jan Brewer and Arizona Citizens Clean Elections Commission

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

v.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM

No. CV08-1550-PHX-ROS

Declaration of David Schapira

(Assigned to the Honorable Roslyn O. Silver)

and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

David Schapira submits the following Declaration pursuant to 28 U.S.C. § 1746.

1. I am a Democratic candidate for Arizona State Representative in District 17.

2. As a candidate for this office in 2006 and 2008, I have been harmed by baseless attack ads.

3. I have needed matching funds from the Citizens Clean Elections Commission to educate voters about my campaign and to rebut the inaccurate statements about me made by supporters of my opponents, including independent expenditure campaigns.

4. If matching funds are enjoined for this election, I will not be able to run an effective campaign.

5. The availability of matching funds is an important factor in my ability to run an effective campaign and provides me with confidence that I can effectively respond to substantial campaign expenditures in the form of attack ads.

6. My campaign volunteers, supporters and I have spent hundreds of hours working on this campaign, and if matching funds were barred now, all of that work would be undermined.

7. I would not have run as a participating candidate if matching funds were not available.

8. I would not have run as a candidate if matching funds were not available.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of August, 2008.

/s/ David Schapira
David Schapira

INSTITUTE FOR JUSTICE
398 South Mill Avenue
Suite 301
Tempe, Arizona 85281
(480) 557-8300

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN COMMISH, *et al.*, **Plaintiffs,** **V.** **JAN BREWER, *et al.*,** **Defendants.**	**No.** **CV 08-1550-PHX-ROS**

DECLARATION OF RICK MURPHY

(Filed Jul. 2, 2009)

1. I, Rick Murphy, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am currently an Arizona State Representative, representing Legislative District 9. I was elected to that position in 2004. I make this declaration in support of Intervenors' Complaint in Intervention in the above-referenced matter.

3. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

4. I am currently running for re-election in Legislative District 9 as a privately financed candidate. I am running as a privately financed candidate because I oppose the use of taxpayer money to fund campaigns. When I first ran for office in 2004, I ran as a government funded candidate because the Citizens Clean Elections Act (the "Act") penalizes privately funded candidates and I felt that I had no choice but to run with government funds. In my 2006 campaign I ran as a privately financed candidate.

5. This year, I seriously considered running as a government funded candidate because with three government-funded opponents I believe I am running at a significant disadvantage. This is because of the matching funds provisions of the Act, which work to aid my opponents every time I engage in my First Amendment right to freely speak by raising or expending campaign funds. Thus I am penalized every time I engage in political speech as a privately financed candidate.

6. The impact of these matching funds provisions is that I must censor myself by limiting my speech. I have been forced to limit my speech and abide by the Act's expenditure limits or risk being further outspent by my government-funded opponents because of the operation of the Act. In that regard, I am not able to raise or spend money to engage in my fundamental First Amendment right to speak freely and communicate with Arizona voters.

7. In the upcoming general election I will face two government-funded Democratic opponents, and

one government-funded Republican. There were no primary election contests, so my Democratic opponents did not have any primary opposition, yet still received full primary cash disbursements under the Act of $12,921.

8. If I engaged in additional fundraising during the general election, it is likely that I will trigger matching funds. Basically, for every $1 I raise above the general election spending limit, I will trigger $3 in taxpayer financed matching funds paid to the government funded candidates in my race. I may, therefore, be forced to forego any fundraising in order to avoid assisting my opponents by sending government checks directly to their taxpayer financed campaign war chests.

9. Thus, the only way I can avoid being massively outspent by my opponents is to prevent the triggering of additional matching funds to their campaigns. I may be forced by the operation of the Act to stop accepting contributions to my campaign to make sure that I do not exceed the Act's expenditure limitations for this race, despite the fact that I would like to continue to collect contributions in order to communicate with the voters of in my district. I wish to reach more voters by expending such funds, were I able to collect them. I am thus likely to be coerced into accepting the same limits as my government-funded opponents and yet I did not receive any of the benefits of being a government-funded candidate, such as the receipt of matching funds for independent expenditures that opposed my candidacy and the label "participating" or "clean" candidate.

10. As the Clean Elections Commission spends funds to promote the Clean Elections system, especially during election years, I have personally noticed that there is an increasing public perception that candidates who do not accept government funding are "dirty" candidates because they are not participating in the "clean" elections system. The label "nonparticipating" candidate punishes me, as a privately financed candidate, for doing nothing more than exercising my constitutional right to raise money to run for political office and to speak without government-imposed regulations and limits on my speech.

11. Pursuant to 28 U.S.C. §1746(2), I, Rick Murphy, hereby declare under penalty of perjury under the laws of the United States and the State of Arizona that the foregoing is true and correct to the best of my knowledge, information and belief.

/s/ Rick Murphy
Rick Murphy
EXECUTED ON
AUGUST 29, 2008

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-3911

Attorneys for Plaintiffs-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State Of Arizona, *et al.*, Plaintiff-Intervenors vs. JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants,	Civil Action No. 08-1550-PHX-ROS PLAINTIFF-INTERVENOR MURPHY'S RESPONSE TO DEFENDANTS' AND DEFENDANT-INTERVENORS' INTERROGETORIES AND DOCUMENT REQUESTS (Filed Jul. 2, 2009)

[1] Admitted *pro hac vice*.

and	)	(Assigned to the
	)	Honorable
CLEAN ELECTIONS INSTITUTE, INC.	)	Roslyn O. Silver)
	)	
Defendant-Intervenor.	)	

These responses are based on information that is currently known to Plaintiff-Intervenor Rick Murphy and may not be conclusive. Investigation is continuing. Plaintiff-Intervenor reserves the right to supplement and/or amend any of these disclosures.

Interrogatories

1. Identify each hardship or harm that you contend you will suffer in the 2008 general election if a preliminary injunction is not granted in this case.

I will be harmed in this election every time my three opposing publicly funded candidates receive matching funds. My current fundraising total is almost equal to my publicly funded opponents' general election spending limit. That means that very soon, every dollar contributed to my campaign will trigger three dollars in matching funds – one dollar (less 6%) to each of my publicly funded opponents. I believe I have the fundraising capacity to raise between $40,000-$50,000. However, that amount on its own would not be enough money to exhaust my publicly funded opponents matching funds. Moreover, any independent expenditure made to support me will also trigger matching funds to my opponents. The

fact is that due to the availability of matching funds, I am going to be significantly outspent in the 2008 general election because of my exercise of my First Amendment rights and, potentially, the exercise of First Amendment rights of any independent groups supporting me or opposing my opponents. It is conceivable and perhaps likely that if matching funds were not available to my opponents, I would not be outspent in the general election in 2008.

Fundraising

Matching funds makes it more difficult to fundraise. Absent a preliminary injunction, high propensity donors will be less likely to donate money to my campaign. In my experience, donors do not like their contribution to be counter-acted by government funds. Donors are discouraged by the fact that their contribution to my campaign results in the government paying my opponents to come in and make the speech they just paid for null and void. If a preliminary injunction is granted, I will be able to raise additional money from donors who will not give money because of the clean elections matching funds scheme. For example, absent a preliminary injunction, my Father and Stepmother will not contribute to my campaign because they know it will get matched.

Under the matching funds scheme, my experience is that it takes twice as many calls to raise the same amount of money as it would if the preliminary injunction is granted. Moreover, there are different

kinds of fundraising and the return on those different kinds of fundraising can vary. Matching funds will require me to evaluate closely, and possibly forego, fundraising efforts that I otherwise might have engaged in, particularly those that will require a great consumption of time. The more time I spend fundraising, the bigger a net loser the effort will be because of the matching funds. I have to give up time on the campaign trail, while my publicly funded opponents can spend all of their time campaigning with the money that I essentially raised on their behalf.

Independent Expenditures

I will most likely be harmed in this general election by independent expenditures. State Republican Party officials, among others from both sides of the political aisle, have told me that I am a target this election and I expect that there will be significant expenditures made against me. Expenditures made against me neither count toward my publicly funded opponents general election spending limit, nor do they result in my receiving any matching funds. Generally, I would expect some group or groups to respond either with donations to my campaign or with independent expenditures of their own. However, any donations to my campaign or independent expenditures to support me, or oppose my publicly funded opponents, will trigger even more matching funds to my opponents. Every aspect of matching funds benefits the publicly funded candidates while working to my detriment.

If an independent expenditure is made that purports to support me – regardless whether it actually aids my campaign or is consistent with my message – my publicly funded opponents will receive matching funds triggered by that independent expenditure. My opponents will then have additional money on hand specifically to allow for a response to the independent expenditure. And yet, I will have had no control over the independent expenditure that triggered the matching funds. It is thus entirely possible that the entire exchange from both sides will be harmful to my message and campaign. And if I find myself in the position of having to engage in additional fundraising to respond, I may end up providing even more public funding for my opponents' taxpayer financed war chests.

The expectation of opposing independent expenditures means that I am going to have to have money on hand and in reserve to respond to those independent hit pieces. Yet, simply raising those reserve funds means providing taxpayer funds to my opponents that they can spend immediately as long as they continue to be eligible for additional matching funds. I have to raise money and hold onto it so that I can be ready in the event an independent expenditure happens. But as long as my publicly funded opponents know that there will be future matching funds triggered, they can spend the money that I raise and trigger to them right now without having to hold onto reserves because they can use matching funds that are triggered later on in the campaign to respond to

independent expenditures. The harder I work, the more my publicly funded opponents benefit.

2. Identify any other hardship or harm not identified in response to Interrogatory No. 1 that you contend you will suffer if a preliminary injunction is not granted in this case.

I do not have any additional allegations of hardship or harm other than those identified in response to Interrogatory Number 1.

3. Identify each instance where you did not spend money on your campaign because of the matching funds provision, and the date(s) upon which each such instance occurred.

It is not possible to be so specific. In reality, I do not run two campaigns: one with matching funds and one without matching funds. The availability of matching funds for my opponents dictates my strategy and influences my thinking from the very beginning of the election cycle right up to the very end.

There is, however, one specific example I can think of from the 2008 primary election. Absent the matching funds provisions, I would very likely have sent at least one mailer during the primary even though I was uncontested. The mailer would have helped me build name identification and typically once a person votes for a person in the primary they will vote for them again in the general. However, the reason I did not spend money on a mailer was in order to conserve money for the 2008 general election.

The matching funds provisions make it harder for a privately financed candidate to raise money from high propensity donors. As stated in my response to Interrogatory Number 1, matching funds make people less likely to donate, especially those who are in tune with the nuances of the Clean Elections scheme. It would have been nice to get a head start in the 2008 general election by mailing a 2008 primary election piece, but I could not take the chance that I might not be able to raise sufficient general election funds. My prospective donors understand that the Democratic Party is targeting me and that there will likely be significant independent expenditures opposing me. My donors know that I will be significantly outspent and that with the availability of matching funds I cannot catch up and that if they contribute to my campaign they will trigger a dollar-for-dollar match to my opponents.

4. Identify each instance where your speech was chilled or limited by the matching funds provision, and the date(s) upon which each such instance occurred.

See my response to Interrogatory Number 3.

5. Identify each instance where you did not spend money to engage in campaign speech because the matching funds for your opponent or opponents had been triggered.

See my response to Interrogatory Number 3.

6. Identify each person who participated in or contributed to any decision by you not spend money or engage in campaign communication because of the matching funds provision.

Up to this point, I have been the only person to make decisions with regard to my 2008 campaign.

7. Identify each advertisement paid for through independent expenditures that was "ineffective, confusing or damaging" and was "intended simply to trigger matching funds" for your opponent or opponents as alleged in Paragraph 43 of Plaintiffs' amended complaint in this action.

I did not make these allegations in my Complaint in Intervention. This question is therefore not relevant to me.

8. Identify each instance in a political race in which you were a candidate where a special interest has "multiplied the speech impact of their independent expenditures" by encouraging one candidate to run as a "traditional candidate" and others to run as "participating" candidates, and paying for advertisements supporting the "traditional" candidate in order to trigger matching funds for the "participating" candidates, as alleged in Paragraph 42 of Plaintiffs' amended complaint in this action.

I did not make these allegations in my Complaint in Intervention. This question is therefore not relevant to me. Speaking generally, I am aware that

privately funded candidates do sometimes run as a slate with other publicly funded candidates, such as the recent races for Corporation Commission that have already been documented in this case.

9. Identify each instance not described in response to Interrogatory Nos. 7 and 8 where the matching funds provision of the Act has been gamed by special interests for the purpose of triggering matching funds for your opponent or opponents as alleged in Paragraphs 42-44 of Plaintiffs' amended complaint in this action.

I did not make these allegations in my Complaint in Intervention. This question is therefore not relevant to me.

10. Identify the total amount of money you spent on fundraising in the 2008 primary election.

I did not spend any money on fundraising in the primary. I did make some fundraising phone calls, but that is mostly an investment of time.

11. Identify all election campaigns in which you participated as a candidate.

In 2004, I was a candidate for the Arizona House of Representatives in Legislative District 9 in both the primary and general elections as a participating candidate.

In 2006, I was a candidate for the Arizona House of Representatives in Legislative District 9 in both

the primary and general elections as a traditional candidate.

In 2006, I also ran for a seat on the Peoria Unified School District Governing Board.

In 2008, I was a candidate for the Arizona House of Representatives in Legislative District 9 in the primary and I am currently a candidate in the 2008 general election as a traditional candidate.

12. With reference to any Arizona statewide election campaigns identified pursuant to Interrogatory No. 11, identify whether you ran as a participating candidate under the Act.

I have not run in any statewide election campaigns.

13. Identify all expert witnesses you intend to rely upon in support of the motions for preliminary injunction.

Dick M. Carpenter II, Ph.D.

14. Identify any opinions that your experts intend to offer in support of the motions for a preliminary injunction and describe the basis for each of those opinions.

Dr. Carpenter's findings are spelled out in his written declaration, which was filed in support of the Motion for Preliminary Injunction.

* * *

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF JOHN MCCOMISH

(Filed Jul. 17, 2009)

Phoenix, Arizona
September 11, 2008
2:02 p.m.

and)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
)
Defendant-Intervenor.)

REPORTED BY:
CATHY J. TAYLOR, RPR
Certified Reporter
Certificate No. 50111

PREPARED FOR:
ASCII/CONDENSED
(COPY)

* * *

[52] Q. Are there goals set for those fundraising events?

A. Not individually, no. Not at this point. There will be.

Q. What types of events will those be? You said that you had two events –

A. Uh-huh.

Q. – where you had commitments from people to throw those –

A. Yes.

Q. – fundraising events.

A. What do you mean by type of event?

Q. Could you describe what those events will be.

A. Yes. One of them I anticipate will be at – at that individual's home where there will be some light refreshments served.

Q. And the other?

A. And the other I anticipate will be at a – at a – at a location, an event location.

Q. When you say event location, what do you mean?

A. Like bar/restaurant catered type of facility that's able to do some modest catering.

Q. For the event at the individual home, how will money be raised?

A. People will be invited to come.

* * *

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF RICHARD A. MURPHY

(Filed Jul. 2, 2009)
(Filed Jul. 31, 2009)

Phoenix, Arizona
September 11, 2008
9:02 a.m.

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.)
)
Defendant-Intervenor.)

REPORTED BY:
MARTA M. RICE, CSR, RPR
Certified Reporter
Arizona Certificate Number 50746

PREPARED FOR:

ASCII/COPY

* * *

[12] Q. Okay. So have you had difficulty raising money?

A. I would say it's more difficult than I thought it would be, in the sense that, I've had more people that [13] have said – or the fact that I had any people that said that they weren't – they didn't really want to donate because, you know, with matching funds there was really no point. They would donate to me, my challenger would get money, it would be a wash, so why bother?

* * *

[30] Q. Yeah.

[31] You talked about a disadvantage with your opponent receiving matching funds. Can you please describe what disadvantage you feel or you encounter when your opponent receives matching funds from your

spending – well, I know there's two different ways – from – let's start with just from your going over their spending limits.

A. Well, the primary disadvantage –

Q. I'm sorry. And I just want to make clear that in the primary, I guess, it would be the spending limits and – it's a different calculation in the general –

A. Right.

Q. – so I'll – I'm talking about the primary at this point. And I'm sorry to interrupt you.

A. Oh, that's okay.

Well, we don't have – we didn't have a primary opponent this time. However, had I chosen to spend money in the primary or had we had a third candidate, you know, the dynamics can be different depending upon how many are participating and how many aren't, and all that kind of stuff.

But if I were running traditional and there were, say, two participating candidates in a primary, I would have to be real careful about how I spent my money, because every time I spend money both of them get matched. [32] And so I'm going to get outspent two-to-one for every single dollar I spend above that limit, regardless. And I've got to do the work to raise that money and take time away from campaigning to raise that money, and they don't have to do

anything. They can be out campaigning and meeting people.

And so it's kind of a double whammy in the sense that, not only am I doing the work and taking the time and losing out on the opportunity to be out with – with voters, but then it's two-to-one.

And so if it was a one-on-one race – well, if it was a one-on-one race then you don't. But if there was only one participating candidate, the potential damage would be a little less in the sense that it wouldn't be two-to-one.

But – but still, I have to take time, do the work, raise the money, and they just get the money. And they can be doing other things that are, you know, actually producing votes. And so even – even in the best case scenario, it's a disadvantage. The more participating candidates there are, the bigger the disadvantage becomes.

Q. And I appreciate that. I appreciate that explanation. I'm just trying to understand when you say a disadvantage, now, your opponent getting money, how – [33] what specifically does the money turn into or does it result in? Or is it just the fact that they have more money that causes you to be less likely to win a race or –

A. Well, money –

Q. – do you – I'm just wondering.

A. Sure. Money equals political speech. And it might be more signs. It might be bigger signs. It might be full color signs that I can't afford. It might be more mailers. I mean, it could be, depending on whatever they

* * *

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[41] But regardless of any of that, I specifically chose to stop raising money because I didn't want to trigger matching funds. You know, I didn't –

Q. Okay.

A. – I felt like it was just going to get to a point where I would raise money, I would spend money to raise money, and she would get money, and I would never – you know, her advantage would get higher and higher the more I raised and the more we both spent. It didn't seem like it made a lot of sense for me to do that, so I curtailed my speech and curtailed my fundraising in order to prevent it.

* * *

[54] Q. All right. But – and you told me you've never turned away a donation?

A. Not to this point.

Q. Okay.

A. Just to clarify, though. I have not turned away a contribution to this point, but I also have very pointedly stopped soliciting –

Q. Okay.

A. – because I knew that I didn't want to trigger the matching funds, particularly in 2006.

* * *

---

[58] And this is a point that's later on, but if I'm expecting that there are going to be independent expenditures against me that might distort my record, I have to have resources available to defend myself.

And the simple fact of even having that money on hand triggers matching funds for my opponent. They don't have to hold on to it.

If somebody spends an independent expenditure against them, they're going to get money to respond with.

So the money I trigger just by being ready, that I can't even spend yet, triggers matching funds to them that they go ahead and either attack me with or promote themselves with or both or whatever.

* * *

[60] And so the damage is significant and it's irreparable. And so I have to be ready. I have to have the money on hand. And my opponent gets the same money and didn't have to do anything to earn it and then they go out and spend it. So it's a double whammy.

* * *

[88] Q. Right. Can you give me a example of – I know you said they were less likely to – the high propensity donors are less likely to donate to your campaign.

Do you have any specific examples of a specific high propensity donor that has told you that they don't want to donate to your campaign?

A. I can't really give you a name right now, but – but here's – you know, the – the thing that you have to [89] consider is that there are 90 legislative candidates – there are 90 legislators, and obviously more candidates than that. Anyone who either donates a – close to the maximum or the maximum or whatever, you know, these – these people that like to be active, they want to – they can't afford to donate in every race because the cap doesn't really give - excuse me – give them that much room.

Q. Are you talking – you're talking about just their donation cap. Right?

A. Right. Absolutely.

Q. Okay.

A. And so they have to be selective. And, you know, like anybody else, I would think, with their money, they're going to make their donations where they think they're going to be the most effective.

And if they have a choice between donating to me, and I'm going to trigger matching funds if they do that, or they could donate to somebody else and it

won't trigger matching funds – I mean, if I'm that donor, I'm going to trigger – I'm going to donate to the other person because it's going to be more effective.

* * *

[Court Reporter's Certificate Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, and ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF NANCY McLAIN

Phoenix, Arizona
September 15, 2008
9:54 a.m.

(Filed Jul. 17, 2009)

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
)
Defendant-Intervenor.)

REPORTED BY:
MARTA M. RICE, CSR, RPR
Certified Reporter
Arizona Certificate Number 50746

PREPARED FOR:

ASCII COPY

* * *

[33] Q. And you told me there are different ways to go about fundraising for –

A. Yes.

Q. – every – okay.

What way would you characterize your – that you've gone abound raising fundraising – raising money for your campaign?

A. Well, in more than one way.

Q. What were the different ways?

A. I sent out a letter asking for contributions. There have been fundraisers in people's homes. I have spoken with people directly. And I have received unsolicited contributions.

Q. Have you turned down a donation in this campaign yet?

A. No.

Q. How many fundraisers in people's homes have been conducted in your support so far in – for this 2008 campaign?

A. There have been two.

* * *

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO, Plaintiffs, and DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE, Plaintiff-Intervenors, vs. JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, Defendants.	No. CV08-1550-PHX-ROS DEPOSITION OF SHANE WIKFORS (Filed Jul. 17, 2009) Phoenix, Arizona September 16, 2008 10:01 a.m.

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
Defendant-Intervenor.)

REPORTED BY:
CATHY J. TAYLOR, RPR
Certified Reporter
Certificate No. 50111

PREPARED FOR:
ASCII/CONDENSED
(COPY)

* * *

[41] Q. Is it fair to say that Arizona Taxpayers had limited funds in 2006?

A It is fair to say.

Q. Okay. And those limited funds restrained the number of races that you could get involved in?

A That's correct.

Q. Okay. Were there any other factors besides the limited funds that played a role in restricting the number of races that you could make independent expenditures in in 2006?

A. We looked at another race and decided not to get involved in it.

Q. What were the reasons why you decided not to get involved in that other race?

A. Funding.

Q. Meaning you didn't have sufficient funds?

A. That's correct. And we were unable to raise the money in that situation in such a short amount time, and our donors had indicated that they would prefer that the money be spent wisely.

* * *

[61] Q. And is this a report that was filed on behalf of the Arizona Taxpayers Action Committee?

A. Yes.

Q. And is this report – was this report prepared and filed by you?

A. Yes.

Q. How much did Arizona Taxpayers receive during the reporting period covered by Exhibit 4?

A. The report indicates that Arizona Taxpayers received $50 total.

Q. And who was the contributor?

A. The contributor was Thomas Husband.

Q. And Mr. Husband was one of the four contributors that we discussed Arizona Taxpayers had in 2007, is that correct?

A. That is correct.

Q. Okay. So between the November 2006 election and August 13th of 2008. Arizona raised – Arizona Taxpayers had raised less than $900 in contributions, and those contributions came from four individuals at most, is that correct?

A. That is correct.

Q. Okay. How much did Arizona Taxpayers make in independent expenditures during the reporting period covered by Exhibit 4?

[62] A. Based on the report, there were no Independent expenditures.

Q. Aside from bank fees, did Arizona Taxpayers have any expenses that it paid out during the reporting period covered by Exhibit 4?

A. No.

Q. What was Arizona Taxpayers' cash on hand as of the end of this reporting period covered in Exhibit 4?

A. $52.72.

Q. So Arizona Taxpayers had $52.72 in its bank account as of October – or August 13th, 19 – 2008?

A. That's correct.

Q. What is Arizona Taxpayers' cash on hand as of today?

A. I believe it is $52.72 unless the bank has deducted a monthly service fee. So it will be equal to or less than $52.72.

Q. So since the date of the primary election. Arizona Taxpayers has not received any contributions, is that correct?

A. That's correct.

Q. In the period since the November 2006 general election, what efforts has Arizona Taxpayers made to solicit contributions?

A. Minimal.

* * *

[65] Q. How much did you conclude that you needed to raise to be involved in the 2008 elections?

A. We don't – I don't think we discussed any dollar amounts.

Q. So what – what exactly was the action item coming out of these calls? Just that you needed to raise money?

A. That we needed – There was a need to raise money if we – if we intended to be involved in the 2008 election cycle.

Q. Okay. And when did you feel like you needed to raise this money by?

A. 12 months ago.

Q. Okay. And it's fair to say that that money was not raised, is that correct?

A. That's correct.

Q. Okay. Did you make any attempt to reach out to potential donors for the 2008 election?

A. I don't think that I did no. I don't know if Chad attempted to. I – I don't remember.

Q. Given that you needed to raise the money 12 months ago to participate in the 2008 election, why weren't efforts made to go out and raise contributions?

A. Both of us are very limited in our time. I think that we – we also see the – the fact of raising money to do what we'd like to do is almost an overwhelming task.

* * *

[67] Q. Is it fair to say that as of today, you don't have cash on hand to make independent expenditures in the 2008 general elections?

A. It's fair to say $52.72 is not enough money to have an impact.

Q. Okay. Have – how busy are you right now?

A. Extremely.

Q. How busy is Mr. Kirkpatrick?

A. He's also very busy. And would rather he answer for himself. He's difficult to read sometimes.

Q. Is fair to say that neither you, nor he has any more time available to raise funds than you had in 2007?

A. It's fair to say right at this moment we don't have enough time. We could make time if we – we move some things out of the picture.

Q. Like what things?

A. Daily life activities.

Q. Have you discussed –

A. Work schedules.

Q. Your work schedule is largely dictated by campaigns that are ongoing, is that right?

A. Yes.

Q. Okay. Those are campaigns for 2008 general election?

[68] A. Yes.

Q. Okay. Those aren't going to go away between now and the 2008 general election –

A. No.

Q. – is that correct?

And your personal activities are still going to be there between now and the 2008 general election?

A. Yes.

Q. Have you made any attempt to raise funds since the primary election?

A. I have mentioned it to Chad that we need to raise money. And have not made any phone calls to anybody.

Q. Okay. Do you know if Mr. Kirkpatrick has made any phone calls to anyone?

A. I don't know.

Q. Have you sent out any letters to anyone?

A. No.

Q. Have you sent out any e-mails to anyone soliciting contributions?

A. No.

Q. So aside from having conversations with Mr. Kirkpatrick, you have not made any efforts to raise contributions since the 2008 primary election, is that correct?

A. That's correct.

* * *

[91] The costs for the independent expenditures that Arizona Taxpayers contends it would make if matching funds were no longer an issue would be between $13,200 and $20,700, is that correct?

A. Yes.

* * *

[99] And you said during that conversation there was a – there was a discussion about the ability to raise money. And I think you said that you didn't discuss who, how, when or where that raising of money would take place, is that right?

A. That's correct.

Q. Okay. So is it fair to say that there haven't been any plans made yet on how you'll raise money for Arizona Taxpayers between now and election day?

A. Specific plans? With the – obviously the help of your insight in preparing the budget, no.

Q. Okay. Have you – had you laid out a budget before today?

A. We have in the past on other – not specifically for 2008.

Q. Okay. And you haven't made specific plans on how you'll raise the money, is that right?

[100] A. That's correct.

* * *

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Tanja K. Shipman (025205)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
Attorneys for Defendants Secretary of State
Jan Brewer and Arizona Citizens Clean
Elections Commission

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, AND TONY BOUIE,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

v.

No. CV08-1550-PHX-ROS

DECLARATION OF ED ABLESER IN SUPPORT OF DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR PRELIMINARY INJUNCTION

(Filed Sep. 23, 2008)

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, Defendants, and CLEAN ELECTIONS INSTITUTE, INC. Defendant-Intervenor.	(Assigned to the Honorable Roslyn O. Silver)

I, Ed Ableser, declare:

1. I am a Democratic candidate for a seat in the Arizona House of Representatives for legislative district 17. I am running as a participating candidate for the 2008 election. My two Republican opponents (Mark Thompson and Wesley Waddle) and another Democratic candidate (David Schapira) in that race also are running as participating candidates.

2. I ran for the same seat in 2004 and 2006. In each of those elections I ran as a participating

candidate, as did each of my opponents in those elections.

3. I choose to run as a participating candidate because I do not want to run a campaign that is funded by big money, special interest groups. I want to represent the individual voters of my district, who cannot afford to make contributions on par with corporations and high dollar special interest contributors.

4. My constituency has been overwhelmingly in favor of the Clean Elections system. Most of the many voters from my district that I have spoken with about my campaigns and the Clean Elections system are enthusiastic about that system because it puts power back into the hands of the individual voter, rather than special interest groups.

5. To qualify for Clean Elections funding, I was required to collect nearly 300 qualifying contributions in the amount of $5 each from individual electors. Many of the electors that contributed to my campaign in the form of qualifying contributions are students and other young adults, who cannot afford to give a lot of money but who can afford (as almost anyone can afford) the $5 contribution.

6. The Clean Elections system does not merely help to level the playing field for candidates who lack personal wealth or special interest contributors, the system levels the playing field for voters, who can make their voice heard in a way not previously possible, by contributing to participating candidates'

campaigns. As a result of the Clean Elections system, ordinary citizens now can have a seat at the political table of our state government.

7. In addition, because participating candidates must collect qualifying contributions in order to run, participating candidates are required to talk with voters face-to-face and listen to the things voters care about. That is important to me and to the electors of my district. It takes substantial effort to collect the minimum number of qualifying contributions. For my campaigns, I personally have done most of that work.

8. The matching funds provisions of the Clean Elections system are essential to my ability to run as a participating candidate. Although I choose to run as a participating candidate for the reasons explained above, I doubt whether that would be possible if the matching funds provisions were not in effect.

9. In my district, although my opponents have all been participating candidates, I have relied heavily on matching funds to respond to independent expenditures that were made in my races in the 2004 and 2006 elections. Indeed, independent expenditures made to attack me in the 2006 general election resulted in my receiving matching funds up to the statutory maximum.

10. Those matching funds were absolutely essential to my ability to respond to those attack ads against me, which were run just shortly before the election. For example, Dial Corporation has made independent expenditures to fund "hit pieces" against

me in both the 2004 and 2006 elections. Those expenditures amounted to approximately $15,000 in each election.

11. As a participating candidate, I was precluded from raising independent funds to respond to such attack ads. If I had not had access to matching funds, I would not have had any means of responding to such ads and educating voters on the inaccuracies contained therein.

12. In addition, in the typical campaign participating in Clean Elections, funds are spent "up front." It is necessary to spend most campaign money early to obtain signs, literature, and other campaign paraphernalia and to cover other campaign expenses. Saving money until the end of the campaign is foolish and ineffective from a campaign perspective.

13. Because most campaign funds are spent well in advance of the election, participating candidates such as myself do not have funds available to respond to late-run attack ads or other items funded by independent expenditures apart from the matching funds available under the Clean Elections system.

14. For the upcoming 2008 general election, I expect again to reach the maximum in available matching funds due to independent expenditures spent to benefit my opponents in the race. I must be able effectively to respond to those ads with funding for my own ads. If I do not receive those matching funds, I will be severely harmed in my campaign efforts. Specifically, I will not have the

funds necessary to respond to those attack ads, which I fully expect will be run near the time of the election.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17 day of September 2008.

/s/ Ed Ableser
Ed Ableser

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF ROBERT BURNS

(Filed Jun. 12, 2009)
(Filed Jul. 17, 2009)

Phoenix, Arizona
September 17, 2008
10:00 a.m.

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.)
)
Defendant-Intervenor.)

REPORTED BY:
MARTA M. RICE, CSR, RPR
Certified Reporter
Arizona Certificate Number 50746

PREPARED FOR:

ASCII/COPY

* * *

[40] Q. Okay. Now, I know you told me earlier that based on your recollection you hadn't remembered triggering any matching funds for Mr. Poe. Does this – again, it's not a quiz. I was just wondering, does this refresh your recollection that maybe you had triggered funds for Mr. Poe?

A. Well, not really, because I guess the way I would have known about triggering funds would have been if I would have looked at his campaign finance report to see if he received money. And I didn't do that.

My – the way the system works is that we have a number of triggered reports. And, in fact, those triggers come so often, I have taken the position of, if I write a check or if I receive a check, I do a report. Just almost do daily reports practically to make sure I'm covered on these – on these trigger reports.

And so I wasn't really focused on whether or not I was triggering his contribution. I was focused on not overspending to prevent him from getting too much additional money. I mean, that was more of a concern to me than whether I triggered a money – a match for him.

I didn't – I wanted to keep within a relatively low-cost campaign so that I didn't trigger money to him. But I wasn't on a number. I wasn't focused on a number and say, "I'm not going to spend beyond this [41] particular point." I was just sort of in a range, say, I wanted to keep my expenditures at a – at a level that I thought I could get my message out and still not trigger matching funds.

Q. Okay. So you were willing to trigger some matching funds?

A. Well, yeah. I mean, it – it was a – sort of a happening, if you will. If I had to spend X number of dollars to get out a – a mailer, and I had that amount of money, I would go ahead and do the mailer.

* * *

[50] Q. Okay. Looking at the – these numbers, do you [51] recall triggering matching funds for your primary opponents in 2002?

A. Well, again, I didn't – I didn't track their – their expenditures. I'm surprised at the amount. I wasn't aware that that – that they received that amount of money, but I didn't – I didn't track them.

* * *

[87] Q. And do those hosts typically cover the cost of sending out the invitations?

A. Yes. And I – I believe that that is covered under our in-kind contributions statute that they are required to report those.

Q. As in-kind –

A. In-kind contribution, yeah

Q. – as an in-kind contribution to you?

Okay. Does your campaign incur any costs associated with holding those fundraising events?

A. It has.

Q. Okay.

A. It has. It depends on the sponsor. Some sponsors say, "We will – we will cover the costs." Others say, "We'll do the fundraiser." In one – in one case, I did a very limited fundraiser and the sponsor requested that I pay the costs of the – of the fundraiser.

Q. Okay. Did that include the cost of sending out the invitation?

A. No I don't believe it did in that case. This was a fundraiser where some food was available, and I ended up paying for the food.

* * *

[100] Q. Okay. Senator, can you point me to any type of communication that you had with voters in the 1990s that you have not had with voters in your races since 2002 because of the existence of matching funds?

A. Any correspondence now that I did not – or then that I do not have now?

Q. Yes.

A. Well, that's pretty hard to pinpoint. I can't point at a specific instance of communication.

Q. I –

A. I guess the difference would be there was no [101] limit before, there is a limit now on the number of – number of communications that I can make.

Q. Okay. But can you point me to any specific type or number of communications that you used to have with voters before the Clean Elections Act was implemented that you no longer have with voters since?

A. I can't point to a specific mailer or – or document, no. I guess the difference is that at that point in time, I could raise money. I could go out and work toward whatever amount I wanted to raise, and then use up that to make as many mailings as I possibly could make. I can't make that decision now.

Q. Have you reduced the number of mailings you send out to voters since the enactment of the Clean Elections Act?

A. The actual number – is the actual number smaller now then it was then? I can't say.

MS. PERKINS: I'm going to object to vagueness. Do you mean the number –

MR. DAVIS-DENNY: Do you – hold on..

MS. PERKINS: – of people that receive the mailing or the number of mailings that occur during a general election cycle?

I think there's a difference between what you're referring to and what the witness is answering.

[102] BY MR. DAVIS-DENNY:

Q. Okay. Well, go ahead and finish your answer and then –

A. Well, the – the decision to make – the decisions made in the nineties were not restricted like they are now. So the number of mailers, the possible number of mailers, was certainly higher. I don't know the exact number, whether or not the two are different.

Q. Just to be clear. I'm not talking about the hypothetical possible mailers that you could send out –

A. Um-hmm.

Q. – I'm talking about what you actually did then versus what you actually did now. What you

actually did before the Act versus what you actually do after the Act.

And my question is simply, have you reduced the number of mailers that you send out to voters since the enactment of the Clean Elections Act?

A. I don't have a document to prove that. I mean, I can do the hypothetical. I think that they have been reduced. But I can't specifically say that I did less, because I don't have the documentation to back that up.

Q. Okay. What is – if you don't have documentation to support that view, why – what's your basis for saying that?

A. Because I feel restricted now. I feel restricted [103] that I can't raise the amount of money that I have the potential to raise without triggering money for my opponent, and so I'm restricted in how I act.

Q. Okay. But have you actually reduced the absolute number of mailers that you send out since the enactment of the Clean Elections Act?

A. I don't know that – I can't –

Q. You can't say one way or the other?

A. I can't prove that, no.

* * *

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Tanja K. Shipman (025205)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
Attorneys for Defendants Secretary of State Jan Brewer and Arizona Citizens Clean Elections Commission

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, AND TONY BOUIE,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

v.

No. CV08-1550-PHX-ROS

DECLARATION OF TAMMIE PURSLEY IN SUPPORT OF DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR PRELIMINARY INJUNCTION

(Filed Sep. 23, 2008)

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, Defendants, and CLEAN ELECTIONS INSTITUTE, INC. Defendant-Intervenor.	(Assigned to the Honorable Roslyn O. Silver)

I, Tammie Pursley, declare:

1. I am a Democratic candidate for a seat as an Arizona State Representative for legislative district 18. I am running as a participating candidate for the 2008 election. I have three opponents in the general election. Cecil Ash and Steve Court are Republicans running as participating candidates; Joe Brown is an Independent running as a traditional candidate.

2. This is the second time I have run for a statewide office, and the second time I have participated in the Clean Elections funding program. I ran

for the same office in 2006 as a participating candidate.

3. I never considered running as a traditional candidate; it is simply outside the realm of possibility for me. I am a teacher, and I do not have a lot of money, nor do I have the ability to take time off from my job to engage in fundraising. My circle of potential donors is small. My peers also are teachers, and need representation, but cannot afford to spend a lot of money to support a candidate who will represent their interests. The Clean Elections program gives someone like me the opportunity to run for office and participate in the political process, and allows members of the public to get involved in a campaign without a huge expenditure of money.

4. The availability of matching funds also was an important part of my decision to run for office. If I am faced with an opponent who is running as a traditional candidate and can collect $50 to $60 thousand dollars, I am at a serious disadvantage without matching funds. I received matching funds in my 2006 campaign. If matching funds had not been available, I probably would still have participated, but I would have been at a serious disadvantage. Another reason that I chose to run as a Clean Elections candidate is that I want to be beholden to my constituents and answer to them, not to lobbyists or corporations who are giving large campaign donations.

5. It has been my experience that the public views the Clean Elections program as something very positive. It allows people who don't have a lot of money and wouldn't otherwise be able to participate to get involved in the election process and campaign without a large expenditure of money.

6. In order to run as a participating candidate in this election cycle, I collected approximately 252 $5 qualifying contributions. I started collecting these contributions in March 2008. I also collected approximately $2000 in early contributions. I spent all of my early contributions in the primary campaign. Other than these contributions, I received no private donations to my campaign.

7. I have received and allocated or spent all the Clean Elections money allocated to my campaign for the general election. I have no money available for the general election other than money provided to my campaign through the Clean Elections funding.

8. If matching funds were eliminated for the general election, it would put me at a serious disadvantage if there was a big campaign against me. My campaign strategy is already set, and my Clean Elections funding is spent. If the playing field changed, there would be no way for me to respond without additional funding. At this time, I don't know if I will face independent expenditures in my race. In general, I view independent expenditures as a good thing, because they can provide more information to educate the voters on issues. However, without

matching funds, I would be unable to respond to any negative campaign directed against me.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of September 2008.

s/ Tammie Pursley
Tammie Pursley

TODD LANG

9/17/2008

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN McCOMISH, et al., and DEAN MARTIN, a citizen of the State of Arizona, et al., Plaintiff-Intervenors, v. JAN BREWER, in her official capacity as Secretary of State of the State of Arizona, et al., Defendants, and CLEAN ELECTIONS INSTITUTE, INC., Defendant-Intervenor.	)	No. 08-1550-PHX-ROS (Filed Sep. 25, 2008) (Filed Jun. 12, 2009)

DEPOSITION OF TODD LANG

Phoenix, Arizona
September 17, 2008
1:36 p.m.

PREPARED FOR:
THE COURT
(ORIGINAL)

Reported by:
Thomas A. Woppert, RPR
Arizona CCR No. 50476

Ottmar Holiday & Associates
602-485-1488

* * *

[12] Q. Okay. All right. Well, then do you believe that looking at that – the section where it says that the – they intend to create a clean election system that will [13] improve the integrity of Arizona state government, would you say that improving the integrity of the Arizona state government is a goal of the clean elections system?

A. I think that's a fair characterization.

Q. Okay. Would you say that diminishing the influence of special interest money is a goal of the clean elections system?

A. Yes.

Q. Would you say that encouraging citizen participation in the political process is a goal of the clean elections system?

A. Yes.

Q. And would you say that the promotion of freedom of speech under the U.S. and Arizona constitutions is a goal of the clean elections system?

A. Yes.

* * *

[54] Q. Okay. Can you tell me exactly how the act has improved the integrity of Arizona state government since it went into effect?

A. Well, I think it's reflected by the findings and declarations in the act. I think voters and some – some office holders like the idea that they don't have to go to special interests to raise campaign funds and it creates the perception – and, again, I'm not accusing anyone of any wrongdoing – it creates the perception that the legislature is not for sale, which, in my view, improves confidence in our legislature.

Q. But you don't have any –

A. No studies.

Q. Okay.

A. Just based on feedback I've heard.

Q. And what – in those improvements that you've [55] identified, what can be directly tied to the matching funds provision?

A. Matching funds are really useful in that area in terms of integrity –

Well, wait a minute. In – in respect to what goal of the act are you asking me about?

Q. Improving the integrity of the Arizona state government.

A. It would be indirect. It would be because matching funds permit those who are attacked by

vicious, nasty attack ads -- and, of course, we saw examples of those again this cycle. It gives them a chance to respond and correct the record and show the voters that, no, they're not as bad as their opponent would have them seem.

And that sort of response enables -- enables voters to get more information, to understand the system better and to understand the candidates better and to erase some of the dirty laundry that's left by an attack ad. And in that sense, the view -- my view is that it -- it makes them -- it allows them to respect candidates more and to believe they have more integrity.

Q. But you have no empirical evidence of --

A. I have not done a study.

Q. Okay. Let's talk about one of the other goals that you identified, which is diminishing the influence of [56] special interest money.

Has the influence of special interest money declined since the act went into effect?

A. I'm trying to -- I want to read the statute.

Q. Oh, absolutely.

A. Yes. Most directly not in terms of legislative outcomes, but in terms of the fact that the voters get to decide. This is a point that I made at the Goldwater Institute. The voters get to decide who's elected in the primaries, not the chamber of commerce, not

the precinct committeemen and not the newspapers. The voters get to decide.

And in the past, it was who could raise special interest money proving thus to the chamber of commerce or whomever that they're a viable candidate. And what we've seen is those sorts of folks, the folks with connections, are getting beat by clean elections candidates in some cases even though they don't have access to that special interest money.

So in that very direct sense, the influence of special interest money is removed. In a more indirect sense or a more appearance sense, it means that legislators can be – or office holders no longer are beholding to those who might contribute to their accounts in terms of how they vote on a bill or what have you. So – and – and that obviously [57] is a – is a – in my view, a good thing because you want legislators making decisions on the merits.

Q. Do you have any – when you say beholding, what do you mean by beholding?

A. Well, if you come to me – Bill, if you've donated – if you're, you know, a big donor to my campaign and you come to me with a bill that would ban dancing, I might feel obligated to consider it because I don't want to alienate you. And if I get my money from clean – because I need your money. And if I get my money from public funding, I can just decide it on the merits. And, in my view, that's a good thing that promotes integrity.

Q. Let me ask you a question about that actually. Let me make sure I understand the – the theory behind clean elections as you've just articulated it.

The – the idea is that contributors or large contributors, when they make contributions to candidates, there's a chance that those candidates, should they be elected, would be beholding to those contributors in terms of effectuating public policy; is that correct?

A. Well, it's not just that they might actually be beholding, it's also that voter confidence in the system and willingness to participate in the system is reduced because, even though, say, you're an office holder and I give you a lot of money and you happen to vote the way I want you to [58] vote, it's not because you're relying on me for money, it's simply because it's the way you believe and you're doing the right thing.

The problem, though, is that the voters may perceive that, oh, Todd gave Bill a lot of money and, look, he voted yes on Todd's bill, he's corrupt, even though you're not, and that undermines voter confidence as well. So it's not actual corruption, it's the appearance of corruption that undermines voter confidence.

I don't think we have any corrupt legislators right now, I hope. This is about appearances and about encouraging participation and reinforcing good feelings about our – you know, our system of government.

Q. But candidates – under the clean elections system, candidates who are participating in the system still receive money.

A. That's right.

Q. They receive it from the government.

A. Yes.

Q. So wouldn't the perception then be that, instead of being beholding to contributors or large contributors, that the candidates would be beholding to the interests of the government?

A. I certainly think not.

Q. Well, what's the distinction?

[59] A. We have no fiscal interest in the outcome of bills. We're not a for-profit agency looking to improve – to decrease regulation, for instance, that would cost us money. We're simply there to run the act.

And the fact that several of the plaintiffs are clean elections candidates I think reinforces my point. We fund everyone whether they love clean elections or are opposed to it. And I don't think there's even – there's any – I have not seen any indication of any perception that legislators feel beholding to clean elections for any reason. I think they're quite comfortable letting us know their disagreements and problems and, when they agree with us on a particular legislative issue, it's because they agree with us.

Q. But you had said that the – that the perception of a private contributor causing a candidate to be beholding was sufficient to warrant the creation of the clean elections system.

A. It's one of many reasons.

Q. Even when that perception is inaccurate; is that right?

A. Yes.

Q. So the fact that a person may have a perception of the role of the clean elections commission that is inaccurate, does that change the – your calculus as to [60] whether it creates a perception that clean elections candidates are beholding to the government?

A. I don't think clean elections candidates are beholding to the government, if that's what you're asking me, and I've never seen any indication, even from my friends at Goldwater, that there's that perception even. So, no, I – I don't – I don't – I don't see them as the same.

* * *

---

[115] Q. Todd, do you recall Mr. Maurer's policy debate in [116] regards to whether the clean elections system itself creates the appearance of government causing candidates to be beholding to government?

A. Uh-huh.

Q. Do you remember that discussion?

A. I do.

Q. Are you at all concerned that your lobbying to protect the Clean Elections Act from amendment such as occurred in 2007 might be construed by the legislatures and people running for office in the state legislature as a sign that they might best be considering the interests of the commission when they take the commission's money?

MS. SHIPMAN: Objection to form.

MR. DAVIS-DENNY: Objection to form.

THE WITNESS: Absolutely not. I – if you check the transcripts, which you can search on the web, you'll see Senator Gray, who is no fan of clean elections, is opposed to clean elections and has never run clean, thanking me for being there and complaining about my predecessor who hadn't been there for particular testimony. So it's clear to me that the legislators want me there.

And to directly answer your question, for that – you know, for that reason and a million others, I – I know that they're in no way beholding to me or – or concerned that – because I'm lobbying, that somehow, you know, they [117] should run clean or – I'm not sure what you're alluding to, but I don't think it's a problem at all.

BY MR. DRANIAS:

Q. Well, remember you made a distinction between actual influence and the appearance of influence? Remember that distinction?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. So regardless of what the reality might be of your lobbying efforts, wouldn't you agree that reasonable people might infer from your lobbying efforts the appearance of the commission attempting to influence legislators on how they might or might not amend the Clean Elections Act and hence public funding?

MS. SHIPMAN: Objection; form.

MR. DAVIS-DENNY: Object to form.

THE WITNESS: Frankly, no. It simply doesn't make any sense. I've never seen any indication that that might be the case. I've never even heard the most ardent critics suggest that. This is the first time I've even heard it as a possibility – a hypothetical possibility, was when Mr. Maurer raised the issue earlier.

BY MR. DRANIAS:

Q. Has the commission – the Clean Elections [118] Commission conducted any survey to exclude the possibility that there is the appearance created by your lobbying activities that the commission is trying to influence legislation?

MS. SHIPMAN: Objection; form.

THE WITNESS: Well, when we lobby, we are trying to influence legislation, so I'm not sure

what the survey – I'm not sure I understand your question.

BY MR. DRANIAS:

Q. Would you consider the commission to be a monied special interest?

A. No.

Q. Would you –

A. In terms of the fact that the legislature doesn't fund us. We get all the money separate from the legislature, which means that going – I can't imagine how there would be an appearance of corruption because of that because they don't fund us. In fact, we give money to the legislature, or to the general fund.

Q. So your definition of monied special interest is an interest that receives money from the legislature?

A. No, but that's about the only thing we could get from them other than, obviously, bills that improve the law. And how that would be, you know, undue influences, I – I don't understand.

[119] Q. Well, help me play this out just a little bit.

Do you remember how you discussed how the commission would decide whether to match funds for an ad that might be a sham ad? Remember that discussion?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. You would agree that the commission is in a position relative to candidates running in an election to decide who does or doesn't get campaign funds?

MS. SHIPMAN: Objection; form.

THE WITNESS: We fulfill that function, yes, but it's not like it's a – a political decision. It's purely, you know, a function of interpretation of the law and application of the law. And I have enough Republicans and Democrats mad at me that I know that I'm doing it in a completely impartial fashion.

BY MR. DRANIAS:

Q. Again, I am in no way suggesting you're doing anything in less than an impartial fashion, but I'm simply exploring as a possibility that there might be the appearance of influence from the two roles, the role on the one hand, lobbying the legislature, the role on the other hand, during the election, deciding who gets campaign funds.

MS. SHIPMAN: Objection; form.

[120] BY MR. DRANIAS:

Q. Wouldn't you agree that appearance exists?

MS. SHIPMAN: Objection; form.

MR. DAVIS-DENNY: Objection; form.

THE WITNESS: I do not agree that that appearance exists. I – again, maybe – Nick, maybe I need time to think about it because, again, it's the first time you guys have raised it, but it just seems absurd to me. I've never heard of any sort of governmental election commissions whether it's the secretary of state, clean elections or, in other states, the ethics boards being accused of having special interest authority or power or any sort of undue influence. I – I just haven't seen it.

And considering all the bills we've run up to the legislature, last year was the first one we've ever gotten passed. I don't think that we have undue influence or – or that anyone even has that perception, which is more to the point you're making. I – I just don't think the perception's there.

BY MR. DRANIAS:

Q. You have no studies suggesting the perception's –

A. No, I don't. I have no – I have no studies.

* * *

[131] (Deposition Exhibit 9 marked for identification)

THE WITNESS: Can I look at it? Do you want me to look at it?

BY MR. MAURER:

Q. Oh, yeah, absolutely, please. That's what we're here for.

A. This is from the website?

Q. Yes.

Have you ever seen this document?

A. It looks familiar, but I don't specifically recall it.

Q. If I said it was from the clean elections website, would there be any reason why you would doubt that?

A. No, I – I would agree that – I would have no reason to disagree with you.

Q. Okay. It says that the Citizens Clean Elections Act was passed by the people of Arizona in 1998 to level the playing field in the first sentence of the second paragraph; [132] is that correct?

A. Yes.

Q. Okay. So, again, the representation has been to the people of the State of Arizona via your website that the purpose of the act was to level the playing field?

MS. SHIPMAN: Objection; form.

THE WITNESS: I agree that that's one of the purposes. It goes on to refer to some of the other purposes, but it does seem to indicate that that's the purpose, yes.

* * *

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-3911

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State of Arizona, *et al.*, Plaintiff-Intervenors vs. JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants.	Civil Action No. 08-1550-PHX-ROS PLAINTIFF-INTERVENOR BURNS' RESPONSES TO DEFENDANTS' AND DEFENDANT-INTERVENORS' INTERROGETORIES AND DOCUMENT REQUESTS (Filed Jul. 2, 2009)

[1] Admitted *pro hac vice*

and	) (Assigned to the
CLEAN ELECTIONS INSTITUTE, INC.	) Honorable) Roslyn O. Silver)
Defendant-Intervenor.	)

Interrogatories

1. Identify each hardship or harm that you contend you will suffer in the 2008 general election if a preliminary injunction is not granted in this case.

Without a preliminary injunction in this case, I am forced to alter my entire fundraising and campaign strategy. I will only hold one fundraiser during the general election in 2008 in order to avoid triggering matching funds to my government funded opponent. Although this will leave me with less funds, and thus less ability to communicate with my constituents, it is the only way I can ensure my actions do not directly result in filling my opponent's campaign war chest.

If the matching funds provisions were not enforced, I would instead hold multiple fundraisers in order to allow for additional contact with my constituents, most likely in the form of direct mail pieces. With my limited funds I will likely only be able to afford one mailer during this general election, and will not be able to target that mailing to the particular and broad audience I would like to reach. Rather,

I will likely only be able to reach a smaller, more narrow audience.

I also face potential harm based on the possibility of independent expenditures in my race that benefit my publicly funded opponent through matching funds. If an independent expenditure is made that purports to support me – regardless whether it actually aids my campaign or is consistent with my message – my publicly funded opponent will likely receive matching funds triggered by that independent expenditure. My opponent will then have additional money on hand specifically to allow for a response to the independent expenditure, but particularly given my decreased fundraising strategy, I will not have the means for a reply to that response. And given I had no control over the initial independent expenditure triggering matching funds, it's entirely possible the entire exchange from both sides would be harmful to my message and campaign. Nonetheless, I would be left without the means to voice my position and to obtain the means would require additional fundraising that would provide even more public funding for my opponent's taxpayer financed war chest.

* * *

FILED
N 13 201

Nos. 10-238, 10-239

In The
Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

JOHN McCOMISH, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX, VOLUME 2, PAGES 461-731

NICHOLAS C. DRANIAS*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
ndranias@goldwaterinstitute.org
Counsel for Petitioners
John McComish, et al.

WILLIAM R. MAURER*
INSTITUTE FOR JUSTICE
101 Yesler Way, Suite 603
Seattle, WA 98104
Tel: (206) 341-9300
Fax: (206) 341-9311
wmaurer@ij.org
Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

MARY R. O'GRADY*
Solicitor General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
SolicitorGeneral@azag.gov
Counsel for Respondents
Ken Bennett, et al.

BRADLEY S. PHILLIPS*
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Brad.Phillips@mto.com
Counsel for Respondent
Clean Elections Institute, Inc.

*Counsel of Record

[Additional Counsel Listed On Inside Front Cover]

Petitions For Writ Of Certiorari Filed August 17, 2010
Certiorari Granted November 29, 2010

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CLINT BOLICK
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR
CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
Additional Counsel for Petitioners
John McComish, et al.

WILLIAM H. MELLOR
STEVEN M. SIMPSON
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
wmellor@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY D. KELLER
PAUL V. AVELAR
INSTITUTE FOR JUSTICE
398 South Mill Avenue, Suite 301
Tempe, AZ 85281
Tel: (480) 557-8300
Fax: (480) 557-8305
tkeller@ij.org
pavelar@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY A. NELSON
Chief Deputy Attorney General
JAMES E. BARTON II
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Additional Counsel for Respondents
Ken Bennett, et al.

GRANT A. DAVIS-DENNY
ELISABETH J. NEUBAUER
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Additional Counsel for Respondent
Clean Elections Institute, Inc.

MONICA YOUN
MIMI MARZIANI
THE BRENNAN CENTER
FOR JUSTICE AT NYU
SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Tel: (212) 992-8158
Fax: (212) 995-4550
monica.youn@nyu.edu
Additional Counsel for Respondent
Clean Elections Institute, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF MARCUS B. OSBORN, Ph.D.

(Filed Sep. 25, 2008)

Phoenix, Arizona
September 19, 2008
10:00 a.m.

and)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
Defendant-Intervenor.)

REPORTED BY:
MARTA M. RICE, CSR, RPR
Certified Reporter
Arizona Certificate Number 50746

PREPARED FOR:

ASCII/(COPY)

* * *

[22] Q. What conclusions did you reach in your dissertation?

A. Based on the statistics, I found that individual lobbyist contributions are correlated with influence, but at a very low magnitude. And when combined with Arizona's low campaign finance limits, meaning the individual contributions, the collective contribution limits, the PAC contribution limits, all that system, that that was enough of a regulatory impediment to create – or not create – to prevent any – any unjustified influence.

So in essence, if you're concerned about having interest group contributions influence the legislature, as long as you have low contribution limits, that does the job.

Secondly, that PAC contributions are inversely correlated, but not – but not at a statistically significant level. Meaning, the more PAC contributions that legislators receive, the less likely they are to be influenced by interest groups.

In this model I tested PAC – or individual lobbyist contributions for both Clean Elections candidates and for traditionally funded candidates.

* * *

[23] Q. So you were looking to see – sorry. Just so I can clarify. I'm trying to understand. You're looking at whether or not caps on contribution limits cancel out any interest group influence?

A. Yes. And they do.

* * *

[75] Q. Okay. Just to clarify before we move on, what are the opinions you intend to offer in this litigation based on your dissertation and your 2004 paper marked as Exhibit 2?

A. That Arizona's current regulatory structure that limits contributions outside of the Clean Elections Act is adequate in reducing or preventing undue interest group influence.

* * *

[94] Q. But as far as your opinion that the current regulatory structure without Clean Elections is sufficient to limit undue interest group influence, what is the basis for your opinion?

A. Arizona has one of the lowest campaign contribution limits in the country. That we have – we are one of the cheapest states in the nation to get elected to the state legislature. So the demand for campaign contributions, regardless of Clean Elections, is low, and is combined with low contribution limits as well.

Second, that there is not a strong tie between PAC contributions and interest group contributions – or I'm sorry – PAC contributions and interest group influence.

[95] And that there are other mechanisms if you want to improve constituent access to the legislature or improve their information use – there are more effective means of enhancing that then using a Clean Elections system.

Q. What are the more effective means?

A. Investment in legislative research staff and investments in legislators' ability to respond effectively to constituents. Increase secretarial staff, those kind of constituent service capabilities.

* * *

[98] Q. Are you looking at any real examples as part of your study?

A. The first part of the study is focused on the hypothetical examples. I have not yet looked at specific case studies.

Q. So your opinion is more of a hypothesis and not a conclusion?

A. No.

MR. DRANIAS: Objection. Improper form.

BY MS. NEUBAUER:

Q. So if you could state one more time clearly for the record, what is the opinion you intend to offer about the matching funds provision creating disparities in funding?

A. The matching funds provisions of the Clean Elections create disparities in funding depending on the number of competitors in the race and the mix of their funding source.

* * *

[101] A. The legislative race where Robert Blendu and Steve Montenegro and Jerry Weiers ran, where they had two-teamed opponents who created funding disparity against a single individual.

Q. And how are you aware that such a funding disparity was created?

A. In speaking with the candidate Robert Blendu.

Q. Is there any other source for your information?

A. You can look at the campaign finance reports from those candidates.

Q. Did you ever do a study of that scenario?

A. I haven't studied that in detail in terms of a study. It's one example.

Q. Could you please explain how that situation created a disparity.

A. The two-team candidates were able to create increased funding levels against a single privately funded candidate. By teaming up they were able to maximize or – I – in essence, double their money in terms of Clean Elections funding, because you have one private candidate who is teamed with a public candidate, and they were able to get matching funds and they used them collectively against a single opponent.

Q. Is it true that candidates can pull their resources and use them collectively in the absence of the [102] matching funds provision?

A. They could do that, yes.

Q. Okay.

A. The matching funds provision exacerbates that opportunity.

Q. And what is the basis for your conclusion that it exacerbates the opportunity?

A. By the simple fact that if another candidate gets matched based on both candidate's activities, that is not a corollary to any private/private campaign.

Q. In this situation, the real life situation you've described, involving Robert –

A. Blendu.

Q. Blendu, could you explain to me exactly how that disparity emerged?

A. They were able to team their resources together and do direct hit pieces on him supporting both the clean and the traditional candidate, and were able to out-spend or outmaneuver Blendu in the campaign.

Q. Is there any evidence that they would not have been able to do so in the absence of the matching funds provision?

A. Steve Montenegro is a new candidate. He may not have been able to raise those monies. And, secondly, and more importantly, they could have teamed together but [103] without the matching funds the expenditures of Robert Blendu would not have been matched. And so it would have been a – a more equal footing.

Q. Are you positive that the result that you – that there would have been a more equal footing without the matching funds provision?

A. Yes.

Q. Why are you so positive?

A. Because the matching funds provision in itself creates disparities.

Q. And your whole description of this situation involving Robert Blendu is based on what he told you. Is that correct?

A. And looking at campaign finance data.

Q. So you looked at campaign finance data regarding Robert Blendu's race?

A. Yes, briefly.

Q. Did you speak with anybody – when you say, "briefly," what do you mean?

A. I looked at the reports for a few minutes. I mean, nothing detailed, but . . .

Q. So you glanced at the reports?

A. Yeah. I noticed they used the same campaign consultant, those kind of things.

* * *

[104] Q. So you actually looked at the campaign finance reports to see how his opponents spent their money?

A. Um-hmm.

Q. Can you name any other real life example?

A. The Tony Bouie and Karl Seal race was a – someone who supported both Sam Crump and Tony Bouie, I watched that with great interest, yeah. I saw that Tony Bouie and – or excuse me – Sam Crump and Karl Seal used a team approach to gain advantage on Tony Bouie.

MR. DRANIAS: You know, I'm not so sure the transcription would have been clear on that. Can I have the question read back, if you don't mind?

MS. NEUBAUER: Sure.

(Record read.)

THE WITNESS: That – the race involving Tony Bouie, Karl Seal, and Sam Crump.

BY MS. NEUBAUER:

Q. Can you explain how a disparity was created in that race?

A. The ability of the two – Sam Crump and Karl Seal to team their resources together and go after Tony Bouie created a funding advantage – fundraising advantage or funding advantage for the two candidates.

[105] Q. Can you name any other real life example?

A. I can name the Corporation Commission race on both sides. The teaming of Bob Robson, Bob Stump, and Mary McClure. And on the Democrat side the solar team, Sam George and Paul Newman and Sandra Kennedy.

Q. How are you aware of disparities created in those races?

A. I know Bob Robson. I've talked to him. And I know the candidates in both – in both of those races.

Q. Just to go –

A. And – and by looking at the campaign finance spending.

Q. So Bob Robson ran as part of what you're describing as a slate?

A. Correct.

Q. And you're saying that he earned more funding – or he had more funding at his disposal than he otherwise would have because of the matching funds provision?

A. No. He did not, his slate members did.

Q. So the team that he was running with –

A. Correct.

Q. – had more money than they otherwise would have –

A. Correct.

* * *

[141] Q. So your opinion is that the system can be gamed?

A. Yeah. Current regulatory system allows manipulation of matching fund provisions.

Q. So your opinion is that the system can be gamed, or that the current regulatory system allows manipulation of the matching fund provisions?

A. The current regulatory system allows manipulation of the matching fund provisions.

Q. What is your basis for the opinion – for your opinion that the current regulatory system allows manipulation of the matching fund provisions?

A. Based on my 15 years of campaign experience and as a lobbyist who – as all campaign consultants look to maximize opportunities there are – there are ideas or concepts that have come up that could provide opportunities to game the system.

Q. Is there anything else that has formed the basis for your opinion that the current regulatory system allows manipulation of the matching fund provisions?

A. Fundamentally it's my experience in looking at – it's fundamentally based on my professional experience.

* * *

[143] Have you looked at any real life examples in reaching your conclusions that the current regulatory system allows manipulation of the matching funds provision?

A. Yes.

Q. What are those real life examples?

A. There was matching funds contribution provided to Len Munsil in the last gubernatorial election.

Q. Could you please explain how that matching fund –

A. Gaming occurred. A –

Q. I didn't ask the question

A. Oh, I'm sorry

Q. I'm sorry.

Could you please explain how matching funds going to Len Munsil supports your conclusion that the current regulatory system allows manipulation of the [144] matching fund provisions?

A. I can.

Q. Please do

A. The issue in the Munsil case was there was an undocumented third-party expenditure. It was autodialers statewide. Matching funds were issued to compensate for those funds. The source of the campaign contributions was never determined, nor the extent. So they had to make estimations about the size and scope of the independent expenditure.

The fact that there was not a determination or a hard – any discovery that – about the specifics of that matching funds suggests that that – the level of matching funds could be over- or under-reported causing either too many matching funds to be distributed or too little matching funds to be distributed.

Q. Do you know that the independent expenditure you're referring to related to the Munsil campaign was intended to manipulate the system?

A. Since it was unreported, that's a reasonable conclusion to come to.

* * *

[156] Q. I had asked you what the basis for your opinion was that Clean Elections is not responsible solely for increased election competition?

A. The analysis that has been conducted to date, there have been two studies. One by the Goldwater Institute that showed that elections are not any more competitive. That was a very limited study. And then there was a paper by Meyer, Warner, and Williams that made a suggestion that elections are cleaner – or not cleaner, excuse me – are more competitive.

In looking at that analysis I believe that he failed to control for a number of significant variables, including spending by the political parties, changes in underlying demographics in the state that may have a significant influence on electoral competition.

Q. And just to clarify. Again, you've testified that you have never peer reviewed a paper, is that correct, an academic paper?

A. That is correct.

Q. Okay. Is there any other basis for your opinion that Clean Elections is not solely responsible for increased election competition?

A. Those are – those are the major points that I would argue.

* * *

[172] Q. To a reasonable degree of certainty in your fields of expertise, if a matching funds system is overlaid on top of the contribution limits that have already been in place and are in place under Arizona law, would that do anything to diminish undue influence by special interests?

A. No.

* * *

[173] When you say the current system since such low contribution limits across the board for any type of candidate, that the impact of the matching funds provisions of the Clean Elections system has no impact at all on the degree of undue influence by special interest?

A. That is correct.

Q. And is that to a reasonable degree of certainty in your fields of expertise?

A. Yes.

* * *

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Tanja K. Shipman (025205)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
Attorneys for Defendants Secretary of State
Jan Brewer and Arizona Citizens Clean
Elections Commission

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, AND TONY BOUIE,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

v.

No. CV08-1550-PHX-ROS

DECLARATION OF PAMELA DURBIN IN SUPPORT OF DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR PRELIMINARY INJUNCTION

(Filed Sep. 23, 2008)

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, Defendants, and CLEAN ELECTIONS INSTITUTE, INC. Defendant-Intervenor.	(Assigned to the Honorable Roslyn O. Silver)

I, Pamela Durbin, declare:

1. I am a Democratic candidate for a seat in the Arizona House of Representatives for legislative district 3.

2. This is my first time running for office in Arizona. I have two opponents in the race, Republicans Doris Goodale and Nancy McLain. Ms. Goodale is running as a participating candidate and Ms. McLain is running as a traditional candidate. There are two seats available in my race.

3. I have chosen to run as a participating candidate because it would be difficult, if not impossible, for me to raise the funds necessary to run as a traditional candidate. The Clean Elections system enables ordinary citizens, without great personal wealth, to run for office in Arizona and, as such, to offer voters greater choice of candidates. In addition, the Clean Elections system helps to ensure candidates' loyalty to the people they seek to represent, not to special interests.

4. Although I do not know whether or to what extent matching funds may be triggered in this race, I am concerned that such matching funds may not be available in the event that my traditional-candidate opponent makes expenditures against me above the election spending limit or in the event any independent expenditures are made against me or in favor of that opponent.

5. As in my primary race, I expect that the large share of the funding I received from Clean Elections for the general election will be spent by my campaign well in advance of the election. Indeed, most of my campaign committee's money for the general election has already been budgeted for specific campaign expenses. If independent expenditures or traditional-candidate expenditures are made either to defeat my candidacy or to benefit that opponent, I would be effectively unable to respond to those expenditures without the availability of matching Clean Elections funds.

6. In order to run as a participating candidate in this election cycle, I was required to collect approximately 220 qualifying contributions. I collected approximately 284 qualifying contributions in the amount of $5 each from different qualified electors. I personally collected most of those contributions, which required substantial effort on my part, especially considering that I have full time employment and am not able to devote full time to my campaign efforts.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 19th day of September 2008.

/s/ Pamela Durbin
Pamela Durbin

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

[LOGO] **Citizens Clean Elections Commission** [LOGO]

CCEC DISBURSEMENT SUMMARY

Office Index
Click on An office name to view
account summary information
Or simply scroll through the entire report

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State Representative – District 27
State Representative – District 28
State Representative – District 30

Governor			Primary (P), General (G) Initial (I), Matching (M)
Bayless, Betsey – Republican	7/3/2002	$409,950.00	P, I
Bayless, Betsey – Republican	7/9/2002	$19,970.28	P, M
Bayless, Betsey – Republican	7/11/2002	$26,916.27	P, M
Bayless, Betsey – Republican	7/18/2002	$35,844.57	P, M
Bayless, Betsey – Republican	7/25/2002	$52,777.24	P, M
Bayless, Betsey – Republican	8/1/2002	$21,198.35	P, M
Bayless, Betsey – Republican	8/9/2002	$15,495.82	P, M
Bayless, Betsey – Republican	8/15/2002	$34,597.06	P, M
Bayless, Betsey – Republican	8/19/2002	$40,383.76	P, M
Bayless, Betsey – Republican	8/21/2002	$114,602.07	P, M
Bayless, Betsey – Republican	8/23/2002	$3,701.42	P, M
Bayless, Betsey – Republican	8/29/2002	$119,835.36	P, M
Bayless, Betsey – Republican	8/29/2002	$105,329.82	P, M
Bayless, Betsey – Republican	9/3/2002	$18,053.58	P, M
Bayless, Betsey – Republican	9/4/2002	$19,804.04	P, M
Bayless, Betsey – Republican	9/5/2002	$6,521.54	P, M

Bayless, Betsey – Republican	9/6/2002	$2,414.98	P, M
Bayless, Betsey – Republican	9/9/2002	$1,072.08	P, M
Bayless, Betsey – Republican	9/10/2002	$15,619.69	P, M
Bayless, Betsey – Republican	9/10/2002	$4,760.94	P, M
Bayless, Betsey – Republican	9/12/2002	$8,318.74	P, M
Candidate Total		**$1,077,169.61**	
Gutierrez, Alfredo – Democrat	6/24/2002	$409,950.00	P, I
Candidate Total		**$409,950.00**	
Mahoney, Richard – Independent	8/2/2002	$717,416.00	P, I
Mahoney, Richard – Independent	10/3/2002	$39,837.35	G, M
Mahoney, Richard – Independent	10/4/2002	$179,650.00	G, M
Mahoney, Richard – Independent	10/7/2002	$1,000.00	G, M
Mahoney, Richard – Independent	10/10/2002	$223,864.41	G, M
Mahoney, Richard – Independent	10/16/2002	$24,000.00	G, M
Mahoney, Richard – Independent	10/17/2002	$83,719.51	G, M
Mahoney, Richard – Independent	10/24/2002	$140,433.11	G, M
Mahoney, Richard – Independent	10/25/2002	$8,450.00	G, M

Mahoney, Richard – Independent	10/28/2002	$15,761.17	G, M
Mahoney, Richard – Independent	10/29/2002	$88,552.67	G, M
Mahoney, Richard – Independent	10/30/2002	$85,463.33	G, M
Mahoney, Richard – Independent	10/31/2002	$10,492.02	G, M
Mahoney, Richard – Independent	11/1/2002	$23,695.00	G, M
Mahoney, Richard – Independent	11/4/2002	$19,415.00	G, M
Mahoney, Richard – Independent	11/5/2002	$33,125.00	G, M
	Candidate Total	**$1,694,874.57**	
Napolitano, Janet – Democrat	5/3/2002	$409,950.00	P, I
Napolitano, Janet – Democrat	9/12/2002	$614,930.00	G, I
Napolitano, Janet – Democrat	10/3/2002	$219,487.35	G, M
Napolitano, Janet – Democrat	10/10/2002	$223,864.41	G, M
Napolitano, Janet – Democrat	10/17/2002	$113,719.51	G, M
Napolitano, Janet – Democrat	10/24/2002	$672,788.73	G, M
	Candidate Total	**$2,254,740.00**	
Osterloh, Mark – Democrat	5/21/2002	$409,950.00	P, I
	Candidate Total	**$409,950.00**	

Springer, Carol – Republican	8/19/2002	$409,950.00	P, I
Springer, Carol – Republican	8/19/2002	$247,185.35	P, M
Springer, Carol – Republican	8/21/2002	$114,602.07	P, M
Springer, Carol – Republican	8/23/2002	$3,701.42	P, M
Springer, Carol – Republican	8/29/2002	$119,835.36	P, M
Springer, Carol – Republican	8/29/2002	$105,329.82	P, M
Springer, Carol – Republican	9/3/2002	$18,053.58	P, M
Springer, Carol – Republican	9/4/2002	$19,804.04	P, M
Springer, Carol – Republican	9/5/2002	$6,521.54	P, M
Springer, Carol – Republican	9/6/2002	$2,414.98	P, M
Springer, Carol – Republican	9/9/2002	$1,072.08	P, M
Springer, Carol – Republican	9/10/2002	$4,760.94	P, M
Springer, Carol – Republican	9/10/2002	$15,619.69	P, M
	Candidate Total	**$1,068,850.87**	
	Total For Governor	$6,915,535.05	

Secretary of State		Primary (P), General (G) Initial (I), Matching (M)	
Brewer, Jan – Republican	7/2/2002	$86,310.00	P, I
Brewer, Jan – Republican	9/12/2002	$129,460.00	G, I
Brewer, Jan – Republican	10/29/2002	$116.67	G, M
Brewer, Jan – Republican	10/30/2002	$22,973.33	G, M
Brewer, Jan – Republican	11/1/2002	$6,735.00	G, M
Brewer, Jan – Republican	11/15/2002	$36,400.50	G, M
Brewer, Jan – Republican	12/5/2002	$66,505.98	G, M
	Candidate Total	**$348,501.48**	
Collins, Sharon – Republican	8/19/2002	$86,310.00	P, I
	Candidate Total	**$86,310.00**	
Cummiskey, Chris – Democrat	7/30/2002	$86,310.00	P, I
Cummiskey, Chris – Democrat	9/12/2002	$129,460.00	G, I
Cummiskey, Chris – Democrat	11/4/2002	$20,590.50	G, M
	Candidate Total	**$236,360.50**	
DiCiccio, Sal – Republican	8/9/2002	$86,310.00	P, I
	Candidate Total	**$86,310.00**	
Total For Secretary of State		$757,481.98	

Attorney General			Primary (P), General (G) Initial (I), Matching (M)
Goddard, Terry – Democrat	6/26/2002	$86,310.00	P, I
Goddard, Terry – Democrat	9/12/2002	$129,460.00	G, I
	Candidate Total	**$215,770.00**	
Thomas, Andrew – Republican	6/11/2002	$86,310.00	P, I
Thomas, Andrew – Republican	7/9/2002	$7,351.68	P, M
Thomas, Andrew – Republican	7/25/2002	$16,199.63	P, M
Thomas, Andrew – Republican	8/1/2002	$33,266.82	P, M
Thomas, Andrew – Republican	8/7/2002	$18,884.49	P, M
Thomas, Andrew – Republican	8/14/2002	$11,014.00	P, M
Thomas, Andrew – Republican	8/22/2002	$10,407.74	P, M
Thomas, Andrew – Republican	8/26/2002	$6,981.27	P, M
Thomas, Andrew – Republican	8/30/2002	$21,738.66	P, M
Thomas, Andrew – Republican	9/5/2002	$3,829.52	P, M
Thomas, Andrew – Republican	9/6/2002	$500.00	P, M
Thomas, Andrew – Republican	9/10/2002	$13,308.80	P, M
Thomas, Andrew – Republican	9/12/2002	$12,263.28	P, M

Thomas, Andrew – Republican	9/12/2002	$129,460.00	G, I
Thomas, Andrew – Republican	10/29/2002	$116.67	G, M
Thomas, Andrew – Republican	10/30/2002	$22,973.33	G, M
Thomas, Andrew – Republican	10/31/2002	$1,116.43	G, M
Thomas, Andrew – Republican	11/1/2002	$6,735.00	G, M
	Candidate Total	**$402,457.32**	
Total For Attorney General		$618,227.32	

State Treasurer		Primary (P), General (G) Initial (I), Matching (M)	
Petersen, David A. – Republican	7/18/2002	$43,150.00	P, I
Petersen, David A. – Republican	9/12/2002	$64,730.00	G, I
Petersen, David A. – Republican	10/29/2002	$116.67	G, M
	Candidate Total	**$107,996.67**	
Petrenka, Richard – Republican	8/7/2002	$43,150.00	P, I
	Candidate Total	**$43,150.00**	
Solomon, Ruth – Democrat	8/15/2002	$43,150.00	P, I
Solomon, Ruth – Democrat	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
Total For State Treasurer		$259,026.67	

Superintendent of Public Instruction		Primary (P), General (G) Initial (I), Matching (M)	
Bee, Keith – Republican	7/16/2002	$62,422.89	P, M
Bee, Keith – Republican	7/16/2002	$43,150.00	P, I
Bee, Keith – Republican	7/24/2002	$1,448.86	P, M
Bee, Keith – Republican	7/29/2002	$3,137.22	P, M
Bee, Keith – Republican	8/1/2002	$19,291.03	P, M
	Candidate Total	**$129,450.00**	
Blanchard, Jay – Democrat	7/18/2002	$43,150.00	P, I
Blanchard, Jay – Democrat	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
Molera, Jaime – Republican	7/18/2002	$62,422.89	P, M
Molera, Jaime – Republican	7/18/2002	$43,150.00	P, I
Molera, Jaime – Republican	7/24/2002	$1,448.86	P, M
Molera, Jaime – Republican	7/29/2002	$3,137.22	P, M
Molera, Jaime – Republican	8/1/2002	$19,291.03	P, M
	Candidate Total	**$129,450.00**	

Rich, Rodney – Democrat	8/16/2002	$43,150.00	P, I
Candidate Total		**$43,150.00**	
Total For Superintendent of Public Instruction		$409,930.00	

State Mine Inspector	Primary (P), General (G) Initial (I), Matching (M)		
Hallock, Kenneth – Democrat	8/1/2002	$21,580.00	P, I
Hallock, Kenneth - Democrat	9/12/2002	$32,370.00	G, I
Candidate Total		**$53,950.00**	
Martin, Douglas – Republican	7/26/2002	$21,580.00	P, I
Martin, Douglas – Republican	9/12/2002	$32,370.00	G, I
Candidate Total		**$53,950.00**	
Total For State Mine Inspector		$107,900.00	

Corporation Commissioner – Term Ending January 3, 2005	Primary (P), General (G) Initial (I), Matching (M)		
Cunningham, George – Democrat	8/26/2002	$43,150.00	P, I
Cunningham, George – Democrat	9/12/2002	$64,730.00	G, I
Candidate Total		**$107,880.00**	

Hatch-Miller, Jeff – Republican	7/3/2002	$43,150.00	P, I
Hatch-Miller, Jeff – Republican	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
James, Roland – Democrat	8/29/2002	$43,150.00	P, I
James, Roland – Democrat	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
Total For Corporation Commissioner – Term Ending January 3, 2005		$323,640.00	

Corporation Commissioner – Term Ending January 1, 2007 Primary (P), General (G) Initial (I), Matching (M)

Irvin, Jim – Republican	9/10/2002	$43,150.00	P, I
Irvin, Jim – Republican	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
Walsh, James – Democrat	8/30/2002	$43,150.00	P, I
Walsh, James – Democrat	9/12/2002	$64,730.00	G, I
	Candidate Total	**$107,880.00**	
Total For Corporation Commissioner – Term Ending January 1, 2007		$215,760.00	

State Senator – District No. 1		Primary (P), General (G) Initial (I), Matching (M)	
Knight, Dawn – Democrat	7/2/2002	$10,790.00	P, I
Knight, Dawn – Democrat	9/12/2002	$16,180.00	G, I
Knight, Dawn – Democrat	9/17/2002	$11,315.84	G, M
Knight, Dawn – Democrat	11/1/2002	$3,389.07	G, M
	Candidate Total	**$41,674.91**	
O'Donnell, John – Democrat	8/14/2002	$10,790.00	P, I
	Candidate Total	**$10,790.00**	
Total For State Senator – District No. 1		$52,464.91	

State Senator – District No. 2		Primary (P), General (G) Initial (I), Matching (M)	
Johnson, Rita – Democrat	6/24/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Total For State Senator – District No. 2		$16,185.00	

State Senator – District No. 3		Primary (P), General (G) Initial (I), Matching (M)	
Jessie, Jacqueline – Democrat	8/27/2002	$10,790.00	P, I
Jessie, Jacqueline – Democrat	9/12/2002	$16,180.00	G, I

Jessie, Jacqueline – Democrat	9/17/2002	$12,321.96	G, M
Jessie, Jacqueline – Democrat	10/3/2002	$7,210.00	G, M
Jessie, Jacqueline – Democrat	10/23/2002	$9,420.00	G, M
Jessie, Jacqueline – Democrat	10/29/2002	$965.00	G, M
Jessie, Jacqueline – Democrat	11/5/2002	$648.04	G, M
	Candidate Total	**$57,535.00**	
Total For State Senator – District No. 3		$57,535.00	

State Senator – District No. 4		Primary (P), General (G) Initial (I), Matching (M)	
Harper, Jack – Republican	6/24/2002	$16,185.00	P, I
Harper, Jack – Republican	9/5/2002	$1,634.64	P, M
Harper, Jack – Republican	9/6/2002	$3,850.00	P, M
Harper, Jack – Republican	9/12/2002	$4,050.82	P, M
Harper, Jack – Republican	9/12/2002	$1,310.00	G, I
	Candidate Total	**$27,030.46**	
Total For State Senator – District No. 4		$27,030.46	

State Senator – District No. 7		Primary (P), General (G) Initial (I), Matching (M)	
Bollerman, Jeff – Democrat	9/9/2002	$10,790.00	P, I
Bollerman, Jeff – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Marsh, Wesley – Republican	8/6/2002	$16,185.00	P, I
Marsh, Wesley – Republican	8/6/2002	$10,479.33	P, M
Marsh, Wesley – Republican	8/7/2002	$3,206.74	P, M
Marsh, Wesley – Republican	9/5/2002	$10,945.34	P, M
	Candidate Total	**$40,816.41**	
Total For State Senator – District No. 7		$67,786.41	

State Senator – District No. 9		Primary (P), General (G) Initial (I), Matching (M)	
Donaldson, Blaine – Republican	6/11/2002	$10,790.00	P, I
Donaldson, Blaine – Republican	7/16/2002	$104.39	P, M
Donaldson, Blaine – Republican	8/1/2002	$122.27	P, M
Donaldson, Blaine – Republican	8/13/2002	$1,050.00	P, M
Donaldson, Blaine – Republican	8/21/2002	$1,667.34	P, M
Donaldson, Blaine – Republican	8/28/2002	$523.24	P, M

Donaldson, Blaine – Republican	8/29/2002	$7,775.51	P, M
Donaldson, Blaine – Republican	9/4/2002	$1,019.08	P, M
Donaldson, Blaine – Republican	9/10/2002	$666.75	P, M
	Candidate Total	**$23,718.58**	
Turner, Bart – Republican	8/1/2002	$16,185.00	P, I
Turner, Bart – Republican	8/29/2002	$5,848.05	P, M
Turner, Bart – Republican	9/4/2002	$1,019.08	P, M
Turner, Bart – Republican	9/10/2002	$666.75	P, M
Turner, Bart – Republican	11/1/2002	$3,960.00	P, M
	Candidate Total	**$27,678.88**	
	Total For State Senator – District No. 9	$51,397.46	

State Senator – District No. 10		Primary (P), General (G) Initial (I), Matching (M)	
Kennedy, Judy – Democrat	7/12/2002	$10,790.00	P, I
Kennedy, Judy – Democrat	9/12/2002	$16,180.00	G, I
Kennedy, Judy – Democrat	9/17/2002	$32,360.00	G, M
	Candidate Total	**$59,330.00**	
	Total For State Senator – District No. 10	$59,330.00	

State Senator – District No. 11		Primary (P), General (G) Initial (I), Matching (M)
Starky, Stuart – Democrat	9/6/2002	$10,790.00 P, I
Starky, Stuart – Democrat	9/12/2002	$16,180.00 G, I
Starky, Stuart – Democrat	10/16/2002	$4,213.09 G, M
Starky, Stuart – Democrat	10/30/2002	$1,955.78 G, M
Starky, Stuart – Democrat	10/31/2002	$7,580.00 G, M
Starky, Stuart – Democrat	11/1/2002	$1,180.00 G, M
Starky, Stuart – Democrat	11/5/2002	$400.00 G, M
	Candidate Total	**$42,300.87**
Total For State Senator – District No. 11		$42,300.87

State Senator – District No. 12		Primary (P), General (G) Initial (I), Matching (M)
Mahoney, Peter – Democrat	8/14/2002	$10,790.00 P, I
Mahoney, Peter – Democrat	9/12/2002	$16,180.00 G, I
Mahoney, Peter – Democrat	9/17/2002	$11,520.00 G, M
Mahoney, Peter – Democrat	9/19/2002	$1,670.00 G, M
Mahoney, Peter – Democrat	10/22/2002	$2,470.00 G, M
Mahoney, Peter – Democrat	10/30/2002	$5,000.00 G, M

Mahoney, Peter – Democrat	10/30/2002	$5,000.00	G, M
Mahoney, Peter – Democrat	11/1/2002	$6,700.00	G, M
Candidate Total		**$59,330.00**	
Total For State Senator – District No. 12		$59,330.00	

State Senator – District No. 13		Primary (P), General (G) Initial (I), Matching (M)	
Miranda, Richard – Democrat	7/16/2002	$16,185.00	P, I
Miranda, Richard – Democrat	8/21/2002	$1,841.47	P, M
Miranda, Richard – Democrat	8/29/2002	$700.00	P, M
Miranda, Richard – Democrat	9/4/2002	$1,075.39	P, M
Miranda, Richard – Democrat	9/10/2002	$1,400.00	P, M
Miranda, Richard – Democrat	9/12/2002	$1,125.00	G, I
Candidate Total		**$22,326.86**	
Total For State Senator – District No. 13		$22,326.86	

State Senator – District No. 14		Primary (P), General (G) Initial (I), Matching (M)	
Wilcox, Earl – Democrat	8/6/2002	$16,185.00	P, I
Wilcox, Earl – Democrat	9/9/2002	$252.09	P, M

Wilcox, Earl – Democrat	9/10/2002	$2,718.00	P, M
Wilcox, Earl – Democrat	9/10/2002	$560.00	P, M
Wilcox, Earl – Democrat	9/12/2002	$800.00	P, M
	Candidate Total	**$20,515.09**	
Total For State Senator – District No. 14		$20,515.09	

State Senator – District No. 15		Primary (P), General (G) Initial (I), Matching (M)	
Mitchell, Kathryn A. – Democrat	7/1/2002	$10,790.00	P, I
Mitchell, Kathryn A. – Democrat	8/19/2002	$1,288.48	P, M
Mitchell, Kathryn A. – Democrat	8/21/2002	$2,730.12	P, M
Mitchell, Kathryn A. – Democrat	9/6/2002	$550.86	P, M
Mitchell, Kathryn A. – Democrat	9/10/2002	$294.00	P, M
Mitchell, Kathryn A. – Democrat	9/10/2002	$707.82	P, M
	Candidate Total	**$16,361.28**	
Total For State Senator – District No. 15		$16,361.28	

State Senator – District No. 17		Primary (P), General (G) Initial (I), Matching (M)
Downing, Yuri – Libertarian	9/5/2002	$10,790.00 P, I
Downing, Yuri – Libertarian	9/12/2002	$16,180.00 G, I
Downing, Yuri – Libertarian	10/16/2002	$2,726.00 G, M
Downing, Yuri – Libertarian	10/29/2002	$3,750.00 G, M
Downing, Yuri – Libertarian	10/31/2002	$5,000.00 G, M
Downing, Yuri – Libertarian	11/1/2002	$1,097.50 G, M
Downing, Yuri – Libertarian	11/6/2002	$1,937.93 G, M
	Candidate Total	**$41,481.43**
Knaperek, Laura – Republican	7/11/2002	$10,790.00 P, I
Knaperek, Laura – Republican	9/12/2002	$16,180.00 G, I
Knaperek, Laura – Republican	10/16/2002	$2,726.00 G, M
Knaperek, Laura – Republican	10/29/2002	$3,750.00 G, M
Knaperek, Laura – Republican	11/1/2002	$1,097.50 G, M
	Candidate Total	**$34,543.50**
Mitchell, Harry – Democrat	8/7/2002	$10,790.00 P, I
Mitchell, Harry – Democrat	9/12/2002	$16,180.00 G, I

Mitchell, Harry – Democrat	10/31/2002	$5,000.00 G, M
Mitchell, Harry – Democrat	11/1/2002	$5,000.00 G, M
Mitchell, Harry – Democrat	11/4/2002	$1,937.93 G, M
	Candidate Total	**$38,907.93**
Total For State Senator – District No. 17		$114,932.86

State Senator – District No. 19		Primary (P), General (G) Initial (I), Matching (M)
Cash, Paul – Democrat	8/5/2002	$10,790.00 P, I
Cash, Paul – Democrat	9/12/2002	$16,180.00 G, I
Cash, Paul – Democrat	9/17/2002	$2,015.00 G, M
Cash, Paul – Democrat	10/10/2002	$1,190.00 G, M
Cash, Paul – Democrat	10/24/2002	$540.00 G, M
	Candidate Total	**$30,715.00**
Total For State Senator – District No. 19		$30,715.00

State Senator – District No. 22		Primary (P), General (G) Initial (I), Matching (M)	
Brown, Brent W. – Democrat	7/29/2002	$10,790.00	P, I
Brown, Brent W. – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Dunham, Cynthia – Republican	6/18/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Verschoor, Thayer – Republican	7/16/2002	$16,185.00	P, I
Verschoor, Thayer – Republican	9/17/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Senator – District No. 22		$70,125.00	

State Senator – District No. 25		Primary (P), General (G) Initial (I), Matching (M)	
Stoddard, Dave – Independent	9/4/2002	$18,879.00	P, I
Stoddard, Dave – Independent	10/10/2002	$822.09	G, M
Stoddard, Dave – Independent	10/22/2002	$1,395.00	G, I
Stoddard, Dave – Independent	10/31/2002	$250.00	G, M
	Candidate Total	**$21,346.09**	
Total For State Senator – District No. 25		$21,346.09	

State Senator – District No. 27		Primary (P), General (G) Initial (I), Matching (M)	
Garcia, Jorge – Democrat	7/23/2002	$16,185.00	P, I
Garcia, Jorge – Democrat	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Kromko, John – Democrat	8/7/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Total For State Senator – District No. 27		$43,155.00	

State Senator – District No. 28		Primary (P), General (G) Initial (I), Matching (M)	
Swanson, Kimberly – Libertarian	9/6/2002	$10,790.00	P, I
Swanson, Kimberly – Libertarian	9/12/2002	$16,180.00	G, I
Swanson, Kimberly – Libertarian	9/17/2002	$15,894.00	G, M
Swanson, Kimberly – Libertarian	9/25/2002	$925.00	G, M
Swanson, Kimberly – Libertarian	10/17/2002	$4,765.00	G, M
Swanson, Kimberly – Libertarian	10/22/2002	$150.00	G, M
	Candidate Total	**$48,704.00**	
Total For State Senator – District No. 28		$48,704.00	

State Representative – District 1		Primary (P), General (G) Initial (I), Matching (M)
Camarot, Henry – Democrat	7/18/2002	$10,790.00 P, I
Camarot, Henry – Democrat	9/12/2002	$16,180.00 G, I
Camarot, Henry – Democrat	11/1/2002	$11,604.60 G, M
Camarot, Henry – Democrat	11/4/2002	$1,256.85 G, M
	Candidate Total	**$39,831.45**
Mason, Lucy – Republican	6/17/2002	$10,790.00 P, I
Mason, Lucy – Republican	6/28/2002	$5,395.00 P, I
Mason, Lucy – Republican	8/27/2002	$3,215.36 P, M
Mason, Lucy – Republican	8/28/2002	$1,660.92 P, M
Mason, Lucy – Republican	9/9/2002	$5,877.50 P, M
Mason, Lucy – Republican	9/12/2002	$10,785.00 G, I
Mason, Lucy – Republican	10/31/2002	$2,743.43 G, M
Mason, Lucy – Republican	11/1/2002	$6,245.60 G, M
Mason, Lucy – Republican	11/4/2002	$3,560.20 G, M
Mason, Lucy – Republican	11/5/2002	$5,225.00 G, M
	Candidate Total	**$55,498.01**

Strawn, Thom – Republican	8/28/2002	$16,185.00	P, I
Strawn, Thom – Republican	8/28/2002	$4,876.28	P, M
Strawn, Thom – Republican	9/9/2002	$5,877.50	P, M
	Candidate Total	**$26,938.78**	
Total For State Representative – District 1		$122,268.24	

State Representative – District 2	Primary (P), General (G) Initial (I), Matching (M)		
Cherry, Bill – Democrat	6/24/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
La Russo, Aresta – Democrat	7/30/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Sedillo, James J. "Jim" – Democrat	7/18/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Total For State Representative – District 2		$48,555.00	

State Representative – District 3	Primary (P), General (G) Initial (I), Matching (M)		
Capalby, Matthew – Democrat	8/5/2002	$10,790.00	P, I
Capalby, Matthew – Democrat	9/12/2002	$16,180.00	G, I
Capalby, Matthew – Democrat	11/5/2002	$3,188.18	G, M

	Candidate Total	**$30,158.18**	
Coburn, Maury – Republican	8/21/2002	$16,185.00	P, I
Coburn, Maury – Republican	9/10/2002	$885.81	P, M
	Candidate Total	**$17,070.81**	
Fabrizio, Lee – Republican	6/14/2002	$10,790.00	P, I
Fabrizio, Lee – Republican	8/5/2002	$5,395.00	P, I
	Candidate Total	**$16,185.00**	
Glancy, Richard – Democrat	8/27/2002	$10,790.00	P, I
Glancy, Richard – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Wagner III, Frederick William – Republican	7/1/2002	$16,185.00	P, I
Wagner III, Frederick William – Republican	9/12/2002	$10,785.00	G, I
Wagner III, Frederick William – Republican	11/5/2002	$3,188.18	G, M
	Candidate Total	**$30,158.18**	
Total For State Representative – District 3		$120,542.17	

State Representative – District 4		Primary (P), General (G) Initial (I), Matching (M)	
Boone, Tom – Republican	6/20/2002	$16,185.00	P, I
Boone, Tom – Republican	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Burges, Judy M. – Republican	6/20/2002	$10,790.00	P, I
Burges, Judy M. – Republican	6/21/2002	$5,395.00	P, I
	Candidate Total	**$16,185.00**	
Cordova, Ephram – Republican	8/22/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Hubbs, Carole – Republican	6/18/2002	$16,185.00	P, I
Hubbs, Carole – Republican	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Mahaney Jr., John – Democrat	8/16/2002	$10,790.00	P, I
Mahaney Jr., John – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Representative – District 4		$113,280.00	

State Representative – District 5		Primary (P), General (G) Initial (I), Matching (M)
Brimhall, Debra – Republican	8/27/2002	$10,790.00 P, I
Brimhall, Debra – Republican	8/27/2002	$5,494.86 P, M
Brimhall, Debra – Republican	8/28/2002	$3,769.39 P, M
Brimhall, Debra – Republican	8/30/2002	$2,966.42 P, M
Brimhall, Debra – Republican	9/3/2002	$2,713.89 P, M
Brimhall, Debra – Republican	9/10/2002	$4,211.99 P, M
	Candidate Total	**$29,946.55**
Jeffers, Bill – Democrat	6/19/2002	$10,790.00 P, I
Jeffers, Bill – Democrat	9/12/2002	$16,180.00 G, I
Jeffers, Bill – Democrat	9/17/2002	$11,285.67 G, M
Jeffers, Bill – Democrat	10/17/2002	$3,455.00 G, M
Jeffers, Bill – Democrat	10/29/2002	$3,466.66 G, M
Jeffers, Bill – Democrat	10/31/2002	$2,310.00 G, M
Jeffers, Bill – Democrat	11/1/2002	$1,219.73 G, M
	Candidate Total	**$48,707.06**

Maestas, Claudia – Democrat	6/27/2002	$10,790.00	P, I
Maestas, Claudia – Democrat	9/12/2002	$16,180.00	G, I
Maestas, Claudia – Democrat	9/17/2002	$11,285.67	G, M
Maestas, Claudia – Democrat	10/17/2002	$3,435.00	G, M
Maestas, Claudia – Democrat	10/29/2002	$3,466.66	G, M
Maestas, Claudia – Democrat	10/31/2002	$2,310.00	G, M
Maestas, Claudia – Democrat	11/1/2002	$1,219.73	G, M
	Candidate Total	**$48,707.06**	
Total For State Representative – District 5		$127,360.67	

State Representative – District 6		Primary (P), General (G) Initial (I), Matching (M)	
Larson, Laurie – Democrat	7/18/2002	$10,790.00	P, I
Larson, Laurie – Democrat	9/12/2002	$16,180.00	G, I
Larson, Laurie – Democrat	10/4/2002	$1,121.00	G, M
Larson, Laurie – Democrat	10/28/2002	$1,410.00	G, M
Larson, Laurie – Democrat	10/31/2002	$2,020.00	G, M
Larson, Laurie – Democrat	11/5/2002	$150.00	G, M
	Candidate Total	**$31,671.00**	

Lindsay, Sharon – Democrat	9/18/2002	$16,180.00	G, I
Lindsay, Sharon – Democrat	10/4/2002	$1,121.00	G, M
Lindsay, Sharon – Democrat	10/28/2002	$1,410.00	G, M
Lindsay, Sharon – Democrat	10/31/2002	$2,020.00	G, M
Lindsay, Sharon – Democrat	11/5/2002	$150.00	G, M
	Candidate Total	**$20,881.00**	
Total For State Representative – District 6		$52,332.00	

State Representative – District 7		Primary (P), General (G) Initial (I), Matching (M)	
Barnes, Ray – Republican	8/7/2002	$16,185.00	P, I
Barnes, Ray – Republican	8/7/2002	$9,463.90	P, M
Barnes, Ray – Republican	8/9/2002	$757.50	P, M
Barnes, Ray – Republican	9/3/2002	$7,658.36	P, M
Barnes, Ray – Republican	9/6/2002	$6,753.00	P, M
Barnes, Ray – Republican	9/9/2002	$3,839.36	P, M
Barnes, Ray – Republican	9/17/2002	$10,785.00	G, I
	Candidate Total	**$55,442.12**	

Cain, Virgel – Democrat	8/27/2002	$10,790.00	P, I
Cain, Virgel – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Representative – District 7		$82,412.12	

State Representative – District 8	Primary (P), General (G) Initial (I), Matching (M)		
Chin, Ginny – Democrat	7/2/2002	$10,790.00	P, I
Chin, Ginny – Democrat	9/12/2002	$16,180.00	G, I
Chin, Ginny – Democrat	11/12/2002	$614.93	G, M
	Candidate Total	**$27,584.93**	
Ditchey II, Robert – Republican	8/12/2002	$16,185.00	P, I
Ditchey II, Robert – Republican	8/12/2002	$19,785.94	P, M
Ditchey II, Robert – Republican	8/15/2002	$12,584.06	P, M
	Candidate Total	**$48,555.00**	
Gillis, Kathleen – Republican	7/24/2002	$15,772.86	P, M
Gillis, Kathleen – Republican	7/24/2002	$16,185.00	P, I
Gillis, Kathleen – Republican	7/31/2002	$867.61	P, M

Gillis, Kathleen – Republican	8/7/2002	$3,145.47	P, M
Gillis, Kathleen – Republican	8/15/2002	$12,584.06	P, M
	Candidate Total	**$48,555.00**	
McCullagh, Ron – Republican	6/20/2002	$16,185.00	P, I
McCullagh, Ron – Republican	7/23/2002	$1,346.08	P, M
McCullagh, Ron – Republican	7/24/2002	$14,426.78	P, M
McCullagh, Ron – Republican	7/31/2002	$867.61	P, M
McCullagh, Ron – Republican	8/7/2002	$3,145.47	P, M
McCullagh, Ron – Republican	8/15/2002	$12,584.06	P, M
	Candidate Total	**$48,555.00**	
Rosati, Colette – Republican	8/1/2002	$16,640.47	P, M
Rosati, Colette – Republican	8/1/2002	$16,185.00	P, I
Rosati, Colette – Republican	8/7/2002	$3,145.47	P, M
Rosati, Colette – Republican	8/15/2002	$12,584.06	P, M
Rosati, Colette – Republican	9/17/2002	$10,785.00	G, I
Rosati, Colette – Republican	11/12/2002	$614.93	G, M
	Candidate Total	**$59,954.93**	
Total For State Representative – District 8		$233,204.86	

State Representative – District 9			Primary (P), General (G) Initial (I), Matching (M)
Cuendet, Gerald L. – Republican	7/23/2002	$16,185.00	P, I
Cuendet, Gerald L. – Republican	8/14/2002	$1,458.57	P, M
Cuendet, Gerald L. – Republican	8/28/2002	$187.00	P, M
Cuendet, Gerald L. – Republican	9/4/2002	$4,801.69	P, M
Cuendet, Gerald L. – Republican	9/10/2002	$3,865.00	P, M
	Candidate Total	**$26,497.26**	
Hershfield, Peter – Democrat	8/2/2002	$10,790.00	P, I
Hershfield, Peter – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
McAllister, Shirley – Democrat	8/2/2002	$10,790.00	P, I
McAllister, Shirley – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Representative – District 9		$80,437.26	

State Representative – District 10		Primary (P), General (G) Initial (I), Matching (M)	
Cuthbertson, Bev – Republican	7/16/2002	$10,790.00	P, I
Cuthbertson, Bev – Republican	8/14/2002	$79.68	P, M
Cuthbertson, Bev – Republican	8/27/2002	$2,475.57	P, M
Cuthbertson, Bev – Republican	8/29/2002	$6,662.11	P, M
Cuthbertson, Bev – Republican	9/6/2002	$2,166.42	P, M
	Candidate Total	**$22,173.78**	
Frandsen, Christian – Democrat	8/30/2002	$10,790.00	P, I
Frandsen, Christian – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Quelland, Doug – Republican	7/3/2002	$10,790.00	P, I
Quelland, Doug – Republican	8/14/2002	$79.68	P, M
Quelland, Doug – Republican	8/27/2002	$2,475.57	P, M
Quelland, Doug – Republican	8/29/2002	$6,662.11	P, M
Quelland, Doug – Republican	9/6/2002	$2,166.42	P, M
Quelland, Doug – Republican	9/12/2002	$16,180.00	G, I
	Candidate Total	**$38,353.78**	

Thrasher, Jackie – Democrat	8/22/2002	$10,790.00	P, I
Thrasher, Jackie – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Representative – District 10		$114,467.56	

State Representative – District 11		Primary (P), General (G) Initial (I), Matching (M)	
Tully, Stephen – Republican	6/18/2002	$16,185.00	P, I
Tully, Stephen – Republican	7/9/2002	$13,691.45	P, M
Tully, Stephen – Republican	7/17/2002	$820.85	P, M
Tully, Stephen – Republican	7/18/2002	$586.00	P, M
Tully, Stephen – Republican	7/24/2002	$2,150.09	P, M
Tully, Stephen – Republican	7/31/2002	$288.83	P, M
Tully, Stephen – Republican	8/9/2002	$750.00	P, M
Tully, Stephen – Republican	8/14/2002	$7,802.90	P, M
Tully, Stephen – Republican	8/21/2002	$6,279.88	P, M
Tully, Stephen – Republican	9/17/2002	$10,785.00	G, I
Tully, Stephen – Republican	10/28/2002	$103.26	G, M
Tully, Stephen – Republican	10/30/2002	$1,500.00	G, M

Tully, Stephen – Republican	11/1/2002	$965.24	G, M
Tully, Stephen – Republican	11/5/2002	$550.00	G, M
	Candidate Total	**$62,458.50**	
Wercinski, Sam – Democrat	6/7/2002	$10,790.00	P, I
Wercinski, Sam – Democrat	9/12/2002	$16,180.00	G, I
Wercinski, Sam – Democrat	10/28/2002	$103.26	G, M
Wercinski, Sam – Democrat	11/1/2002	$965.24	G, M
Wercinski, Sam – Democrat	11/5/2002	$550.00	G, M
Wercinski, Sam – Democrat	11/12/2002	$735.00	G, M
	Candidate Total	**$29,323.50**	
Total For State Representative – District 11		$91,782.00	

State Representative – District 12		Primary (P), General (G) Initial (I), Matching (M)	
Murphree, Ted – Democrat	8/30/2002	$10,790.00	P, I
	Candidate Total	**$10,790.00**	
Total For State Representative – District 12		$10,790.00	

State Representative – District 14		Primary (P), General (G) Initial (I), Matching (M)	
Atkins, John – Republican	9/3/2002	$10,790.00	P, I
Atkins, John – Republican	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
McCune Davis, Debbie – Democrat	8/7/2002	$16,185.00	P, I
McCune Davis, Debbie – Democrat	8/7/2002	$9,021.85	P, M
McCune Davis, Debbie – Democrat	8/22/2002	$725.33	P, M
McCune Davis, Debbie – Democrat	9/5/2002	$4,940.93	P, M
McCune Davis, Debbie – Democrat	9/6/2002	$1,000.00	P, M
McCune Davis, Debbie – Democrat	9/10/2002	$6,770.02	P, M
McCune Davis, Debbie – Democrat	9/12/2002	$10,785.00	G, I
McCune Davis, Debbie – Democrat	9/12/2002	$522.09	P, M
	Candidate Total	**$49,950.22**	
Meza, Robert – Democrat	6/26/2002	$16,185.00	P, I
Meza, Robert – Democrat	8/1/2002	$871.12	P, M
Meza, Robert – Democrat	8/7/2002	$8,150.73	P, M
Meza, Robert – Democrat	8/22/2002	$725.33	P, M

Meza, Robert – Democrat	9/5/2002	$4,940.03	P, M
Meza, Robert – Democrat	9/6/2002	$1,000.00	P, M
Meza, Robert – Democrat	9/10/2002	$6,770.02	P, M
Meza, Robert – Democrat	9/12/2002	$10,785.00	G, I
Meza, Robert – Democrat	9/13/2002	$522.09	P, M
	Candidate Total	**$49,949.32**	
Total For State Representative – District 14		$126,869.54	

State Representative – District 15		Primary (P), General (G) Initial (I), Matching (M)	
Clark, Ken – Democrat	6/11/2002	$16,185.00	P, I
Clark, Ken – Democrat	6/13/2002	($5,395.00)	P, I
Clark, Ken – Democrat	7/25/2002	$4,193.62	P, M
Clark, Ken – Democrat	8/15/2002	$2,044.62	P, M
Clark, Ken – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$33,208.24**	

Sinema, Kyrsten – Independent	6/18/2002	$18,879.00	P, I
Sinema, Kyrsten – Independent	11/1/2002	$649.50	G, M
	Candidate Total	**$19,528.50**	
Total For State Representative – District 15		$52,736.74	

State Representative – District 16		Primary (P), General (G) Initial (I), Matching (M)	
Avelar, Carlos – Democrat	8/12/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Landrum, Leah – Democrat	7/23/2002	$16,185.00	P, I
Landrum, Leah – Democrat	9/12/2002	$1,175.00	G, I
	Candidate Total	**$17,360.00**	
Miranda, Ben – Democrat	7/29/2002	$16,185.00	P, I
Miranda, Ben – Democrat	9/12/2002	$1,175.00	G, I
	Candidate Total	**$17,290.00**	
Total For State Representative – District 16		$50,835.00	

State Representative – District 17		Primary (P), General (G) Initial (I), Matching (M)	
Amorosi, Phillip – Democrat	6/24/2002	$10,790.00	P, I
	Candidate Total	**$10,790.00**	
Burton Cahill, Meg – Democrat	7/29/2002	$10,790.00	P, I
Burton Cahill, Meg – Democrat	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Clevenger, Trevor O. – Libertarian	9/9/2002	$10,790.00	P, I
Clevenger, Trevor O. – Libertarian	9/12/2002	$16,180.00	G, I
Clevenger, Trevor O. – Libertarian	10/29/2002	$3,750.00	G, M
Clevenger, Trevor O. – Libertarian	11/1/2002	$1,097.50	G, M
	Candidate Total	**$31,817.50**	
DeDonati, Paul – Libertarian	9/5/2002	$10,790.00	P, I
DeDonati, Paul – Libertarian	9/12/2002	$16,180.00	G, I
DeDonati, Paul – Libertarian	10/29/2002	$3,750.00	G, M
DeDonati, Paul – Libertarian	11/1/2002	$1,097.50	G, M
	Candidate Total	**$31,817.50**	

Despain, Dale – Republican	6/7/2002	$10,790.00	P, I
Despain, Dale – Republican	9/12/2002	$16,180.00	G, I
Despain, Dale – Republican	10/29/2002	$3,750.00	G, M
Despain, Dale – Republican	11/1/2002	$1,097.50	G, M
	Candidate Total	**$31,817.50**	
Helm, Michelle – Republican	6/18/2002	$10,790.00	P, I
	Candidate Total	**$10,790.00**	
Pany, Darlene – Democrat	5/30/2002	$10,790.00	P, I
Pany, Darlene – Democrat	9/12/2002	$16,180.00	G, I
Pany, Darlene – Democrat	10/29/2002	$3,750.00	G, M
Pany, Darlene – Democrat	11/1/2002	$1,097.50	G, M
	Candidate Total	**$31,817.50**	
Shell, Geoffrey – Republican	6/26/2002	$10,790.00	P, I
	Candidate Total	**$10,790.00**	
Thompson, Mark – Republican	7/10/2002	$10,790.00	P, I
Thompson, Mark – Republican	9/12/2002	$16,180.00	G, I

Thompson, Mark – Republican	10/29/2002	$3,750.00	G, M
Thompson, Mark – Republican	11/1/2002	$1,097.50	G, M
	Candidate Total	**$31,817.50**	
Total For State Representative – District 17		$218,427.50	

State Representative – District 18		Primary (P), General (G) Initial (I), Matching (M)	
Johnson, Karen – Republican	6/20/2002	$16.185.00	P, I
	Candidate Total	**$16,185.00**	
Pearce, Russell – Republican	6/18/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Total For State Representative – District 18		$32,370.00	

State Representative – District 19		Primary (P), General (G) Initial (I), Matching (M)	
Daggs, Louise – Republican	6/11/2002	$16,185.00	P, I
Daggs, Louise – Republican	8/28/2002	$2,158.59	P, M
Daggs, Louise – Republican	8/29/2002	$13,087.33	P, M

Daggs, Louise – Republican	9/4/2002	$3,371.22	P, M
Daggs, Louise – Republican	9/9/2002	$2,813.38	P, M
	Candidate Total	**$37,615.52**	
Total For State Representative – District 19		$37,615.52	

State Representative – District 20	Primary (P), General (G) Initial (I), Matching (M)		
Fan, John – Republican	5/30/2002	$10,790.00	P, I
Fan, John – Republican	6/5/2002	$5,395.00	P, M
Fan, John Republican	9/9/2002	$2,708.79	P, M
	Candidate Total	**$18,893.79**	
Huppenthal, John – Republican	7/29/2002	$16,185.00	P, I
Huppenthal, John – Republican	9/9/2002	$2,708.79	P, M
Huppenthal, John – Republican	9/12/2002	$10,785.00	G, I
Huppenthal, John – Republican	10/10/2002	$556.21	G, M
	Candidate Total	**$30,235.00**	

McComish, John – Republican	6/18/2002	$16,185.00	P, I
McComish, John – Republican	9/9/2002	$2,798.79	P, M
Candidate Total		**$18,983.79**	
Total For State Representative – District 20		$68,112.58	

State Representative – District 21	Primary (P), General (G) Initial (I), Matching (M)		
Moore, Ken – Democrat	6/7/2002	$10,790.00	P, I
Moore, Ken – Democrat	9/12/2002	$16,180.00	G, I
Candidate Total		**$26,970.00**	
Nichols, Warde – Republican	7/18/2002	$16,185.00	P, I
Nichols, Warde – Republican	9/12/2002	$10,785.00	G, I
Candidate Total		**$26,970.00**	
Plese, Tara – Republican	6/27/2002	$16,185.00	P, I
Plese, Tara – Republican	9/10/2002	$3,426.50	P, M
Candidate Total		**$19,611.50**	

Yarbrough, Steve – Republican	7/16/2002	$16,185.00	P, I
Yarbrough, Steve – Republican	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Total For State Representative – District 21		$100,521.50	

State Representative – District 22		Primary (P), General (G) Initial (I), Matching (M)	
Livesay, Roberta – Republican	6/24/2002	$16,185.00	P, I
Livesay, Roberta – Republican	9/6/2002	$4,049.50	P, M
Livesay, Roberta – Republican	9/9/2002	$972.01	P, M
	Candidate Total	**$21,206.51**	
Martin, Robert – Republican	7/23/2002	$16,185.00	P, I
Martin, Robert – Republican	9/6/2002	$4,049.50	P, M
Martin, Robert – Republican	9/9/2002	$972.01	P, M
Martin, Robert – Republican	9/10/2002	$661.84	P, M
	Candidate Total	**$21,868.35**	
Total For State Representative – District 22		$43,074.86	

State Representative – District 23		Primary (P), General (G) Initial (I), Matching (M)
Benedict, Brett – Republican	9/6/2002	$10,790.00 P, I
Benedict, Brett – Republican	9/12/2002	$16,180.00 G, I
	Candidate Total	**$26,970.00**
Bustamante, Ernest – Democrat	8/7/2002	$16,185.00 P, I
Bustamante, Ernest – Democrat	9/12/2002	$10,785.00 G, I
Bustamante, Ernest – Democrat	11/4/2002	$5,000.00 G, M
	Candidate Total	**$31,970.00**
Clark, Mark – Democrat	7/12/2002	$16,185.00 P, I
	Candidate Total	**$16,185.00**
Total For State Representative – District 23		$75,125.00

State Representative – District 24		Primary (P), General (G) Initial (I), Matching (M)
Kelly, Patty – Libertarian	9/18/2002	$16,180.00 G, I
Kelly, Patty – Libertarian	10/21/2002	$1,242.82 G, M

Kelly, Patty – Libertarian	10/23/2002	$4,470.00	G, M
Kelly, Patty – Libertarian	11/4/2002	$470.00	G, M
	Candidate Total	**$22,362.82**	
Total For State Representative – District 24		$22,362.82	

State Representative – District 25		Primary (P), General (G) Initial (I), Matching (M)	
Alvarez, Manuel – Democrat	8/9/2002	$16,185.00	P, I
Alvarez, Manuel – Democrat	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Burns, Jennifer – Republican	9/10/2002	$10,790.00	P, I
Burns, Jennifer – Republican	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Lugo, Bobby – Democrat	8/30/2002	$16,185.00	P, I
Lugo, Bobby – Democrat	9/12/2002	$10,785.00	G, I
	Candidate Total	**$26,970.00**	
Stevens, David – Republican	9/20/2002	$16,180.00	G, I
	Candidate Total	**$16,180.00**	
Total For State Representative – District 25		$97,090.00	

State Representative – District 26		Primary (P), General (G) Initial (I), Matching (M)
Watkins, Stuart – Republican	6/27/2002	$16,185.00 P, I
Watkins, Stuart – Republican	7/18/2002	$4,561.06 P, M
Watkins, Stuart – Republican	7/29/2002	$2,566.31 P, M
Watkins, Stuart – Republican	7/31/2002	$1,787.97 P, M
Watkins, Stuart – Republican	8/8/2002	$1,827.84 P, M
Watkins, Stuart – Republican	8/13/2002	$9,731.76 P, M
Watkins, Stuart – Republican	8/21/2002	$378.60 P, M
Watkins, Stuart – Republican	8/28/2002	$3,805.00 P, M
Watkins, Stuart – Republican	8/30/2002	$310.00 P, M
Watkins, Stuart – Republican	9/4/2002	$7,401.46 P, M
	Candidate Total	**$48,555.00**
Total For State Representative – District 26		$48,555.00

State Representative – District 27		Primary (P), General (G) Initial (I), Matching (M)
Cajero Bedford, Olivia – Democrat	7/1/2002	$16,185.00 P, I
Cajero Bedford, Olivia – Democrat	9/12/2002	$1,200.00 G, I
	Candidate Total	**$17,385.00**

George, Jesse – Democrat	6/27/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Hormel, Peter – Democrat	6/10/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Lopes, Phil – Democrat	6/10/2002	$16,185.00	P, I
Lopes, Phil – Democrat	9/17/2002	$1,245.00	G, I
	Candidate Total	**$17,430.00**	
Total For State Representative – District 27		$67,185.00	

State Representative – District 28	Primary (P), General (G) Initial (I), Matching (M)		
Bradley, David – Democrat	8/13/2002	$16,185.00	P, I
Bradley, David – Democrat	9/12/2002	$10,785.00	G, I
Bradley, David – Democrat	11/1/2002	$2,495.84	G, M
	Candidate Total	**$29,465.84**	
Downing, Ted – Democrat	8/1/2002	$16,185.00	P, I
Downing, Ted – Democrat	9/12/2002	$10,785.00	G, I
Downing, Ted – Democrat	11/1/2002	$1,500.00	G, M
	Candidate Total	**$28,470.00**	

Poelstra, Edward – Republican	9/4/2002	$10,790.00	P, I
Poelstra, Edward – Republican	9/12/2002	$16,180.00	G, I
	Candidate Total	**$26,970.00**	
Pyritz, Joe – Democrat	8/9/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Ramirez, Sam – Democrat	9/4/2002	$16,185.00	P, I
	Candidate Total	**$16,185.00**	
Total For State Representative – District 28		$117,275.84	

State Representative – District 30		Primary (P), General (G) Initial (I), Matching (M)	
Langmead, Mike – Democrat	9/6/2002	$10,790.00	P, I
Langmead, Mike – Democrat	9/12/2002	$16,180.00	G, I
Langmead, Mike – Democrat	9/17/2002	$7,457.97	G, M
Langmead, Mike – Democrat	9/25/2002	$670.00	G, M
Langmead, Mike – Democrat	10/10/2002	$870.00	G, M
Langmead, Mike – Democrat	10/30/2002	$1,306.42	G, M
Langmead, Mike Democrat	11/1/2002	$310.00	G, M

Langmead, Mike – Democrat	11/4/2002	$1,204.35	G, M
Langmead, Mike – Democrat	11/6/2002	$226.00	G, M
	Candidate Total	**$39,014.74**	
Schwartz, Bob – Democrat	7/16/2002	$10,730.00	P, I
Schwartz, Bob – Democrat	9/12/2002	$16,180.00	G, I
Schwartz, Bob – Democrat	9/17/2002	$7,457.97	G, M
Schwartz, Bob – Democrat	9/25/2002	$670.00	G, M
Schwartz, Bob – Democrat	10/10/2002	$870.00	G, M
Schwartz, Bob – Democrat	10/30/2002	$1,306.42	G, M
Schwartz, Bob Democrat	11/1/2002	$310.00	G, M
Schwartz, Bob – Democrat	11/4/2002	$1,204.35	G, M
Schwartz, Bob – Democrat	11/6/2002	$226.00	G, M
	Candidate Total	**$39,014.74**	
Total For State Representative – District 30		$78,029.48	
	Grand Total	**$12,862,880.57**	

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Tanja K. Shipman (025205)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
Attorneys for Defendants Secretary of
State Janice K. Brewer and Citizens
Clean Elections Commission

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, AND TONY BOUIE,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

v.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY

No. CV08-1550-PHX-ROS

DECLARATION OF DR. KENNETH R. MAYER

(Assigned to the Honorable Roslyn O. Silver)

(Filed Sep. 23, 2008)

SCARAMAZZO, ROYANN J.
PARKER, JEFFREY L.
FAIRMAN, DONALD
LINDHOLM and LORI S.
DANIELS, in their official
capacity as members of the
ARIZONA CITIZENS CLEAN
ELECTIONS COMMISSION,

Defendants.

EXHIBIT 2

I currently am a Professor of Political Science at the University of Wisconsin – Madison, and a faculty affiliate at the Lafollette School of Public Affairs, at the University. I joined the faculty in 1989. I teach courses on American politics, the presidency, Congress, campaign finance, election law, and electoral systems.

I have a Ph.D. in political science from Yale University, where my graduate training included courses in econometrics and statistics. My undergraduate degree is from the University of California, San Diego, where I majored in political science and have a minor in applied mathematics. My curriculum vitae is attached to this report.

My work has been published in the following peer-reviewed journals: *Journal of Politics*, *The American Journal of Political Science*, *Legislative Studies Quarterly*, *Presidential Studies Quarterly*, *Congress and the Presidency*, and *Public Administration Review*. I have also published in law reviews, including

the *Richmond Law Review* and the *UCLA Pacific Basin Law Journal*. My work on campaign finance has been published in *Legislative Studies Quarterly*, *Regulation*, *PS: Political Science and Politics*, *Richmond Law Review*, the Democratic Audit of Australia, and in an edited volume on electoral competitiveness published by the Brookings Institution Press.

My work on campaign finance has been cited by the Government Accountability Office, and by legislative research offices in Connecticut and Wisconsin. I have consulted on public funding issues with public officials in Seattle, WI and Madison. I am currently the chair of the Madison Blue Ribbon Commission on Campaign Finance Reform, charged with the Mayor to make recommendations on a public funding program for the city.

Since 2003, I have been the principal investigator on the Wisconsin Campaign Finance Project, an ongoing study of campaign finance and public funding programs at the state and local level. I have studied the public funding programs in Arizona, Hawaii, Maine, Minnesota, Nebraska, New York City, and Wisconsin.

I have served as a campaign advisor and consultant in several political campaigns, including candidates for the U.S. Senate (Russ Feingold, 1992 and 1998), the U.S. Congress (Rick Phelps, 1998), the Madison Mayor (Dave Cieslewicz, 2003), and Dane County Executive (Rick Phelps, 1993). In these races I offered strategic advice, reviewed polling data, and gave issue briefings.

In this report, I offer my view of the claims made in the declaration of Dick Carpenter about the effects of Clean Elections on privately funded candidates. My conclusions are based on recognized standards of social science empirical work generally, and on the social science literature on campaign finance. In addition to the data that Dr. Carpenter used to form his conclusions, I make use of my own data on campaign finance, which is publicly available at a web site that I maintain for use by academics interested in conducting research (http://campfin.polisci.wisc.edu/Index.asp)

I also offer my views about the effect of Arizona's Clean Elections law on electoral competitiveness, and on the preventive anti-corruption effect of public funding programs. These conclusions are based on my own peer-reviewed publications, as well as the academic literature on public funding, campaign contributions, and electoral competition.

I. Analysis of Carpenter Declaration

The declaration of Dick Carpenter offers inapt comparisons of campaign spending averages, uses inaccurate and incomplete data to calculate average spending levels, and fails to control for many of the factors that affect the amount of money candidates raise and spend. His comparison of candidate

* * *

senators running for reelection, 17 had a major party opponent, 7 ran in a competitive race, and 1 lost. The improvements are are similar for the House:

	House			Senate		
	Contested	Competitive	Reelected	Contested	Competitive	Reelected
1994	46.3%	24.4%	95.1%	26.3%	0.0%	100.0%
1996	41.9%	27.9%	93.0%	42.1%	25.0%	95.0%
1998	40.0%	22.2%	97.8%	20.8%	8.3%	95.8%
2000	38.9%	36.1%	91.7%	45.0%	30.0%	100.0%
2002	55.9%	47.5%	75.6%	40.0%	31.3%	81.3%
2004	46.5%	36.6%	83.3%	42.9%	23.8%	100.0%
2006	48.8%	32.6%	95.3%	70.8%	37.5%	95.8%

The trend is more noticeable if pre- and post-reform averages are compared[5]. In table 2, I calculate these averages. In every case, the post reform period shows more competition. In the Senate, the percentage of races contested by the major parties rose from 29.8% pre-reform to 49.7% in the post reform period. The percentage of Senate incumbents running in competitive elections nearly tripled, rising from from 11.1% to 30.6%. In both the House and Senate, incumbents are more likely to be defeated: the reelection rate for House incumbents dropped from 95.3% to 86.5%; for the Senate, the rate dropped from 96.9% to 94.3%.

[5] Unlike the case with Carpenter's misguided use of averages, these calculations use similar groupings of races, averages, therefore, are an appropriate way to compare them

	House			Senate		
	Contested	Competitive	Reelected	Contested	Competitive	Reelected
1994-1998	42.7%	24.8%	95.3%	29.8%	11.1%	96.9%
2000-2006	49.3%	34.5%	84.5%	49.7%	30.6%	94.3%

The empirical question about the effect of public funding is largely settled: it has demonstrably increased the amount of competition in the electoral system.

B. Characteristics of Clean Elections Programs – Matching Funds

In order to succeed, public funding programs must enable participating candidates to keep pace with opposition fundraising. The most common condition for accepting public grants is that candidates must agree to limit their spending; privately funded candidates remain free to raise and spend as much as they desire. Arizona redresses this imbalance by offering matching funds that match, dollar for dollar, spending by privately funded candidates above the spending limit, and by independent expenditures.

These matching provisions are crucial to the success of clean elections programs. If candidates fear that they will easily be outspent by the opposition, or face large independent expenditures, they will decline to participate (or, in the case of candidates unable to raise large amounts of money, choose not to run at all). This is one reason participation rates for clean elections programs are higher than the rates in Wisconsin, which offers small grants with no possibility of matching funds.[8] In the 2006 election cycle, 60% of primary and general election candidates participated

[8] Candidates for the state legislature are eligible for grants of up to $15,525 for the Senate, and $7,663 for the Assembly. These amounts have not changed since 1986. There is no provision for additional matching grants. Wisconsin statutes, 11.31, 11.50.

in Arizona's program.[10] In Wisconsin, out of 242 Assembly or Senate candidates in the 2006 cycle, only 37 took public funding, a participation rate of 15.3%.[11]

Matching funds have played an important role in allowing publicly funded candidates to remain competitive with their privately funded opponents. In 2006, 33 Senate candidates accepted public funds. Fifteen of these candidates received some matching funds, ranging from tiny amounts (10th district candidate Linda Gray, who received $243 in matching funds) to significant totals (26th district candidate Albert Melvin, who received $57,429). According to data from the Arizona Clean Elections Commission, seventy one candidates in 2006 received some matching funds, to counter either spending by a privately funded candidate, or independent spending against them.[12]

Eliminating matching funds would put publicly funded candidates at a serious disadvantage. Since candidates can raise no money after they qualify, they devote little or no time or resources to fundraising once they have received public grants (this is well established in the academic literature, and, from candidates' standpoint, is one of the positive features of such programs[13]). Many publicly funded candidates

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[10] http://www.ccec.state.az.us/ccecweb/ccecays/ccecPDF.asp?docPath=docs\2000\2006demographics.pdf

[11] http://campfin.polisci.wisc.edu/WisconsinData.asp

[12] http://www.ccec.state.az.us/ccecweb/ccecays/elections/disb2006.asp

[13] Paul Herrnson and Peter L. Francia, "The Impact of Public Finance Laws on Fundraising in State Legislative Elections," *American Politics Research*, 31:520-539 (No. 5, September 2003).

will lack the organizational capacity to raise money, and if forced to campaign without matching funds would quickly become overwhelmed.

C. Private Candidate Spending

In my view, matching fund provisions do not put privately funded candidates or independent expenditure groups at a disadvantage. I would advise privately funded candidates that it is unreasonable for them not to spend money on his or her campaign, solely because this might result in increased expenditures for the competing candidates. The literature on campaign finance is nearly universal on this point: other things being equal, it is *always* in a candidate's interest to spend more money. The worst that can happen is that the additional expenditures will make no difference.[14]

* * *

[14] In the political science literature, there is a debate about whether incumbents see a benefit to increased spending. While there are scholars who argue that additional spending will not make a difference, there is no support for the position that additional spending hurts. Gary Jacobsen, *The Politics of Congressional Elections* 3rd edition (New York: Harper Collins Publishers, 1992); Donald Philip Green and Jonathan S. Krasno, "Salvation for the Spendthrift Incumbent: Reestimating the Effects of Campaign Spending in House Elections," *American Journal of Political Science* 32: 884-907 (No. 4, November 1988).

BRADLEY S. PHILLIPS (*pro hac vice*)
Brad.Phillips@mto.com
GRANT A. DAVIS-DENNY (*pro hac vice*)
Grant.Davis-Denny@mto.com
ELISABETH J. NEUBAUER (*pro hac vice*)
Elisabeth.Neubauer@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

TIMOTHY M. HOGAN (004567)
ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004
Telephone: (602) 258-8850

Attorneys for Defendant-Intervenor
CLEAN ELECTIONS INSTITUTE, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, et al., Plaintiffs, and DEAN MARTIN, et al., Plaintiff-Intervenors, vs.	CASE NO. CV-08-1550-PHX-ROS (Assigned to the Honorable Roslyn O. Silver) **DECLARATION OF MEG BURTON CAHILL IN SUPPORT OF**

JAN BREWER, et al.,

Defendants,

and

CLEAN ELECTIONS INSTITUTE, INC.

Defendant-Intervenor,

DEFENDANT-INTERVENOR CLEAN ELECTIONS INSTITUTE, INC.'S OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR A PRELIMINARY INJUNCTION

(Filed Jun. 12, 2009)

I, Meg Burton Cahill, declare as follows:

1. I am currently a candidate for the Arizona State Senate in Legislative District 17. I make this declaration in support of Defendant-Intervenor's Opposition To Plaintiffs' And Plaintiff-Intervenors' Motions For A Preliminary Injunction. I have personal knowledge of the following facts, and would competently testify to them if called upon to do so.

2. I currently represent Legislative District 17 in the Arizona State Senate. I was first elected to the State Senate in 2007. I also served in the Arizona House of Representatives from 2001-2006.

3. I have run each of my state legislative campaigns as a participant in the Arizona Clean Elections public funding program. I successfully ran as a participating candidate in 2000 in a two seat district against two incumbents, including the anticipated

Speaker of the Arizona House of Representatives and the future Chair of the House Appropriations Committee. If public funding had not been available in 2000, I would not have run for office against these two powerful incumbents.

4. As with my previous campaigns, I decided to run for office in 2008 as a participating candidate in the Clean Elections program. When I decided to accept Clean Elections funding and the program's spending limits, I assumed that matching funds would be provided if I faced a non-participating opponent who exceeded the spending limit or if I was targeted by independent expenditures. I never considered the possibility that matching funds would not be available in the 2008 election until I learned of this lawsuit in August 2008. By that time, I had already accepted public funds and I thus had no option to raise additional private funds if matching funds were enjoined.

5. Based on my 2004 campaign for the House of Representatives, the availability of matching funds is a critical factor in my decision to participate in the Clean Elections program. In that election, significant independent expenditures were made against me and I received $33,756.23 in matching funds as a result. My initial disbursement for the 2004 general election was only $16,980. Because 66% of the funds I received in the 2004 general election were matching funds, my speech would have been substantially reduced if matching funds were not available. Moreover, if

matching funds had not been available, I would not have been able to run a competitive campaign or provide information to the electorate in response to these independent expenditures.

6. In the 2008 general election, my major-party opponent is also a participating candidate. Based on the party registration of voters in Legislative District 17, this district is one of the most competitive in the state. I believe there is a significant potential for independent expenditure committees to target this race. If matching funds are not available to my opponent or me to respond to false or misleading attacks by independent groups, these interests could determine the outcome of this election.

7. Because I am a participating candidate in the Clean Elections program, I cannot accept private contributions, except limited early contributions and qualifying contributions.

8. The only money I have available for the general election is the money provided to my campaign through the Clean Elections program.

9. My ability to run a viable campaign in 2008 will be seriously and potentially irreparably harmed if matching funds are eliminated during this election cycle.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 23th day of September, 2008, at Tempe, Arizona.

/s/ M. Burton Cahill
M. Burton Cahill

[Certificate Of Service Omitted In Printing]

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

[Title Omitted In Printing]

State of Arizona

[SEAL]

Campaign Finance Report

Bouie for State Representative
Committee #: 200810141

Treasurer: Bouie, Allison Joy
3434 W Anthem Way, Ste 118-493,
Anthem, AZ 85086
Phone: (623) 551-7557
Email: campaign@tonybouie.com
Candidate Name: Bouie, Tony Vanderson
Office Sought: State Representative – District 6

2008 Post-Primary Election Report

Election Cycle: **2007-2008**
Date Filed: October 2, 2008
Reporting Period: August 14, 2008-September 22, 2008

Summary of Finances

Cash Balance at Beginning of Reporting Period:	$10,532.24
Total Cash Receipts this Reporting Period:	$13,520.00

Total Cash Disbursements this Reporting Period: $18,645.02
Cash Balance at End of Reporting Period: $5,407.22

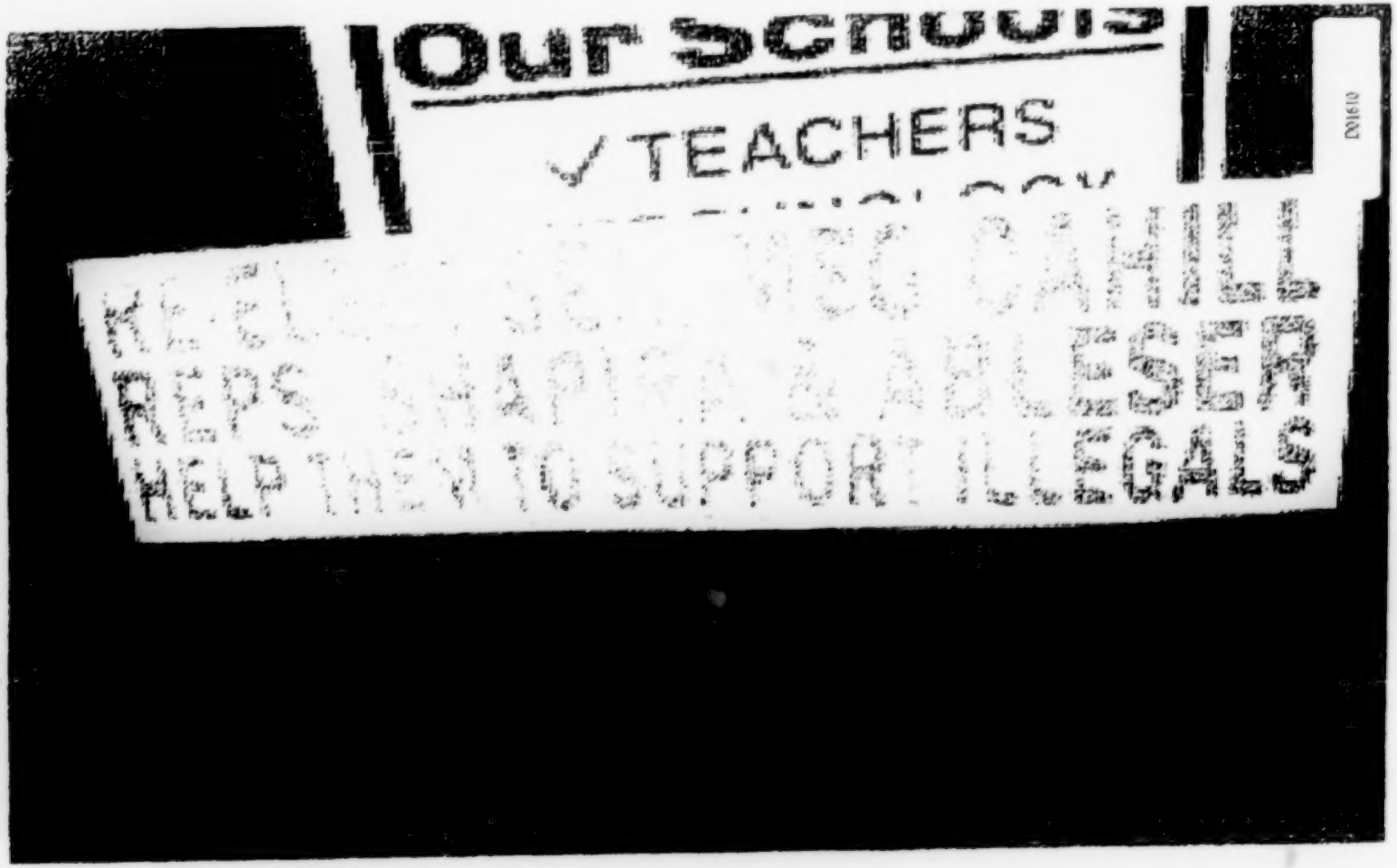
Report ID: 44811

200810141 Bouie for State Representative
Post-Primary Election Report
Covers 08/14/2008 to 09/22/2008

Schedule E1 – Operating Expenses

Name:	Circle K
Address:	4343 E Camelback Rd, # 1752, Phoenix, AZ 85018
Category:	Travel - Meals
Memo:	Sign Removal

	Date	Amount	Cycle to Date
	09/17/2008	$3.14 Cash	$151.66
Total of Operating Expenses		$12,795.02	
Total of Refunds, Rebates, and Credits Received		$0.00	
Net Total of Operating Expenses		$12,795.02	


Our Schools
TEACHERS
REPS
HELP THEM TO SUPPORT ILLEGALS

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

VICTORY 2008, a political committee registered with the Secretary of State; ARIZONANS FOR A HEALTHY ECONOMY, a political committee registered with the Secretary of State, Petitioners, v. CITIZENS CLEAN ELECTIONS COMMISSION, Respondent, v. DAVID STEVENS, Real Party in Interest	No. **DECLARATION OF MARIA WEEG**

1. I am the campaign manager for Victory 2008.

2. This declaration is made on my own personal knowledge and in support Petitioners' Complaint for Special Action, Declaratory and Injunctive Relief.

3. I learned that David Stevens, a participating candidate for the state house of representatives for district 25, failed to attend the required debate on September 24, 2008.

4. My attorneys informed me that the Citizens Clean Elections Commission ("CCEC") Executive Director informed them that Mr. Stevens had not submitted a timely request for reconsideration for his ineligibility to receive matching funds and that the Executive Director believed that Mr. Stevens was ineligible to receive matching funds.

5. Based on the CCEC's representations of Mr. Stevens' ineligibility for matching funds, Victory 2008 developed a plan for its campaign in legislative district 25.

6. On October 23, 2008, Victory 2008 sent voters in legislative district 25 a mailer advocating the election of Mr. Stevens' two Democratic opponents.

7. Had Mr. Stevens been eligible for matching funds, Victory 2008 would not have made any independent expenditures in legislative district 25.

8. Victory 2008's campaign efforts will be thwarted if its actions will result in Mr. Stevens receiving money that he is not eligible to receive based on the CCEC's own rules.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of October, 2008, in Phoenix, Arizona.

/s/ Maria Weeg
Maria Weeg

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

VICTORY 2008, a political committee registered with the Secretary of State; ARIZONANS FOR A HEALTHY ECONOMY, a political committee registered with the Secretary of State, Petitioners, v. CITIZENS CLEAN ELECTIONS COMMISSION, Respondent, v. DAVID STEVENS, Real Party in Interest.	No. **MEMORANDUM OF LAW IN SUPPORT OF VERIFIED COMPLAINT FOR SPECIAL ACTION, DECLARATORY AND INJUNCTIVE RELIEF** **– AND –** **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INTERLOCUTORY STAY** **– AND –** **SUPPORTING MEMORANDUM**

* * *

B. Petitioners' Expenditures in Legislative District 25

Victory 2008 contacted the CCEC staff several times on or around October 2, 2008, regarding Mr. Stevens' failure to attend the debate. The CCEC informed Victory 2008 that Mr. Stevens had not

submitted a request for reconsideration for his ineligibility to receive matching funds, and that accordingly, the CCEC believed that Mr. Stevens was ineligible to receive matching funds. Based on the CCEC's representations of Mr. Stevens' ineligibility for matching funds, Victory 2008 developed a plan for its campaign in legislative district 25.

AFHE learned that Mr. Stevens failed to attend his debate and, based on its review of the CCEC rules regarding debates, concluded that Mr. Stevens would be ineligible for matching funds. Based on this understanding of the CCEC rules, AFHE developed a campaign plan that included mail pieces in legislative district 25 and removed campaign activity in legislative district 24.

Until the agenda for the CCEC's October 23, 2008 public hearing was posted on October 21, 2008, there was no public notice (or even any private notice to the Petitioners) that Mr. Stevens had made a request for reconsideration. By this time, however, Petitioners had either made independent expenditures in the district or had already made significant commitments to make such expenditures. Neither Petitioner would have made these independent expenditures had Mr. Stevens been eligible to receive equalizing funding.

* * *

III. PETITIONERS WILL BE IRREPARABLY HARMED

The Petitioners have developed and are implementing campaign plans based on the CCEC's clear

rules regarding a candidate's ineligibility to receive matching funds based on failure to participate in a required debate. The CCEC's decision to exempt Mr. Stevens and to award matching funds, if allowed to stand, will have a significant chilling effect on Petitioners' ability to implement its campaign plan effectively. Once equalizing funds are provided to Mr. Stevens, these funds will be spent, and the harm would be done.

* * *

Dated: October 24, 2008

PERKINS COIE BROWN & BAIN P.A.

By: /s/ Charles A. Blanchard
Charles A. Blanchard
Rhonda L. Barnes
Suite 2000
2901 North Central Avenue
Phoenix, AZ 85012-2788

COPPERSMITH GORDON SCHERMER & BROCKELMAN

Andrew S. Gordon
Suite 1000
2800 North Central Avenue
Phoenix, Arizona 85004

Attorneys for Petitioners Victory 2008 and Arizonans for a Healthy Economy

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

VICTORY 2008, a political committee registered with the Secretary of State; ARIZONANS FOR A HEALTHY ECONOMY, a political committee registered with the Secretary of State, Petitioners, v. CITIZENS CLEAN ELECTIONS COMMISSION, Respondent, v. DAVID STEVENS, Real Party in Interest	No. **VERIFIED COMPLAINT FOR SPECIAL ACTION, DECLARATORY AND INJUNCTIVE RELIEF** **[ELECTIONS MATTER]**

For its Verified Complaint for Special Action, Declaratory and Injunctive Relief against Respondent and Real Party in Interest, Petitioners allege as follows:

* * *

Petitioners' Expenditures in Legislative District 25

29. Victory 2008 contacted the CCEC staff on or around October 3, 2008, regarding Mr. Stevens' failure to attend the debate and was informed that Mr. Stevens had not submitted a timely request for reconsideration for his ineligibility receive matching funds, and that accordingly, the CCEC believed that Mr. Stevens was ineligible to receive matching funds. [Declaration of James E. Barton II at ¶¶ 3-4, attached as Exhibit E]

30. Based on the CCEC's representations of Mr. Stevens' ineligibility for matching funds, Victory 2008 developed a plan for its campaign in legislative district 25. On October 23, 2008, Victory 2008 sent voters in legislative district 25 a mailer advocating for the election of Mr. Stevens' two Democratic opponents. [Declaration of Maria Weeg at ¶¶ 5-6, attached as Exhibit F]

31. AFHE learned that Mr. Stevens failed to attend his debate and, based the CCEC rules regarding debates, recognized that Mr. Stevens was ineligible for matching funds. [Declaration of Bill Whitaker at ¶ 3, attached as Exhibit G]

32. Because Mr. Stevens was ineligible for matching funds, AFHE developed a campaign plan that included mail pieces in legislative district 25 and removed mail pieces in legislative district 24. On or around October 23, 2008, AFHE sent voters in

legislative district 25 a mailer advocating for the election of Mr. Stevens' two Democratic opponents. [*Id.* at ¶¶ 4-5]

33. Had Mr. Stevens been eligible for matching funds, Victory 2008 would not have made any independent expenditures in legislative district 25 and AFHE would not have made independent expenditures on October 23, 2008, in legislative district 25. [Weeg Declaration at ¶ 7; Whitaker Declaration at ¶ 6]

* * *

The Effect of the CCEC's Actions

43. If the CCEC's decision not to apply A.R.S. § 16-956(A)(2) and R2-10-107 to Mr. Stevens stands, Mr. Stevens will receive $27,507.68 in matching funds for mailers that were sent to voters before there was any public notice that Mr. Stevens had even made a request for an exemption from his violation of the debate requirements. [Barnes Declaration at ¶ 11]

44. Further, based on the CCEC's decision, all independent expenditures made by Petitioners will be matched for Mr. Stevens.

45. Petitioners' campaign efforts will be thwarted if their actions will result in Mr. Stevens receiving money that he is not eligible to receive based on the CCEC's own rules. [Weeg Declaration at ¶ 8; Whitaker Declaration at ¶ 7]

* * *

Dated: October 24, 2008

PERKINS COIE BROWN & BAIN P.A.

By: /s/ Charles A. Blanchard
Charles A. Blanchard
Rhonda L. Barnes
Suite 2000
2901 North Central Avenue
Phoenix, AZ 85012-2788

COPPERSMITH GORDON SCHERMER & BROCKELMAN

Andrew S. Gordon
Suite 1000
2800 North Central Avenue
Phoenix, Arizona 85004

Attorneys for Petitioners Victory 2008 and Arizonans for a Healthy Economy

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

VICTORY 2008, a political committee registered with the Secretary of State; ARIZONANS FOR A HEALTHY ECONOMY, a political committee registered with the Secretary, of State, Petitioners, v. CITIZENS CLEAN ELECTIONS COMMISSION, Respondent, v. DAVID STEVENS,	No. **DECLARATION OF WILLIAM G. WHITAKER**

1. I am the treasurer for Arizonans for a Healthy Economy ("AFHE").

2. This declaration is made on my own personal knowledge and in support Petitioners' Complaint for Special Action, Declaratory and Injunctive Relief.

3. I learned that David Stevens, a participating candidate for the state house of representatives in

district 25, failed to attend the debate required for legislative candidates and, based the Citizens Clean Elections Commission ("CCEC") rules regarding debates, recognized that Mr. Stevens was ineligible for matching funds.

4. Because Mr. Stevens was ineligible for matching funds, I developed a campaign plan that included mail pieces in legislative district 25 and removed mail pieces in legislative district 24.

5. On or around October 23, 2008, AFHE sent voters in legislative district 25 mailers advocating for the election of Mr. Stevens' two opponents.

6. Had Mr. Stevens been eligible for matching funds, AFHE would not have made independent expenditures on October 23, 2008, in legislative district 25.

7. AFHE's campaign efforts will be thwarted if its actions will result in Mr. Stevens receiving money that he is not eligible to receive based on the CCEC's own rules.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of October, 2008, in Phoenix, Arizona.

/s/ William G. Whitaker
William G. Whitaker

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

HONORABLE J. KENNETH MANGUM, JUDGE

VICTORY 2008, a political committee registered with the Secretary of State; et al.,	)	
Petitioners,	)	Superior Court
v.	)	CV 2008-026648
CITIZENS CLEAN ELECTIONS COMMISSION,	)	
Respondent,	)	
v.	)	
DAVID STEVENS,	)	
Real Party in Interest.	)	

Phoenix, Arizona
October 28, 2008
10:59 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Hearing)

KITTY K. LOVEJOY, RMR
OFFICIAL COURT REPORTER
CERTIFIED COURT REPORTER #50443

* * *

[10] And, again, it's important because people rely on this fact. The fact that Mr. Stevens had not complied with the rules was very important to both my client and Mr. Gordon's client as to whether or not they should make expenditures and when they should make them.

* * *

[16] In early October both my client, Victory 2008, and Mr. Gordon's client, the Arizonans for Healthy Economy on their own independently and without consulting with each other both came to the same conclusion that under the rules Mr. Stevens was ineligible to receive matching funds and therefore made plans to make expenditures that they otherwise would not have made.

* * *

[20] If – if they know there is going to be no consequence of matching funds, they are going to be more likely to make a decision to make an expenditure than if there are no – no – than if matching funds are going to be done, or they may make the decision to make late – late filings and expenditures where the other side has less opportunity to use the matching funds.

* * *

[26] A. It played a huge role. And Arizonans for a Healthy Economy conducted efforts in numerous districts. And we actually had more districts that we would like to be in. But because of matching-funds issue, there were decisions made to not advocate in

specific districts because – because of the matching-funds issue. That was one step.

The second step was other districts that we didn't want to go into – we didn't want to advocate in until very late because of the matching-funds issue. And then the first – the first set of districts had the matching funds –

* * *

[27] A. In LD 25 we were going to do one of two things:

Number one, not participate in at all. That was the first option.

The second option was to advocate in but very late in the campaign cycle.

Q. So you trigger – if you followed the second one, you trigger the matching funds later so Mr. Stevens would have less time to use it –

A. Yes, sir.

Q. – basically?

And did your decision-making process regarding LD 25 then change?

A. Yes.

Q. And what made it change?

A. When we were informed that Mr. Stevens would more than likely not receive matching funds,

that was 100 percent of our – our decision was based off 100 percent of that information.

Q. And you were told he wouldn't get matching funds because he hadn't showed up at the debate?

A. Because he hadn't showed up at the debate and then there was no action on October 10th.

* * *

[Court Reporter's Certification Omitted In Printing]

Political Signs

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,

Plaintiffs,

and

DEAN MARTIN, a citizen of the State Of Arizona, *et al.*,

Plaintiff-Intervenors

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; *et al.*,

Defendants,

and

Civil Action No. 08-1550-PHX-ROS

PLAINTIFF-INTERVENORS' RESPONSES TO DEFENDANTS' AND DEFENDANT-INTERVENOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION

(Filed Jul. 2, 2009)

---

[1] Admitted *pro hac vice*.

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

(Assigned to the Honorable Roslyn O. Silver)

* * *

the "clean elections" program. In essence, the government is telling voters that participating candidates should be preferred over nonparticipating candidates.

Robert Burns

Because the matching funds provisions penalize privately funded candidates for raising contributions and spending money on political speech, Senator Burns has run every one of his campaigns since the adoption of the Clean Elections Act at a significant disadvantage compared to his publicly funded opponents.

The matching funds provision of the Clean Elections Act has forced Senator Burns to censor himself by forcing him to limit his speech by abiding by the Act's expenditure limits to avoid being outspent by his publicly funded opponents.

During the 2006 general election, Senator Burns focused on running a low cost campaign so as to not trigger a lot of matching funds to his publicly funded Democratic opponent.

In the 2006 general election Plaintiff-Intervenor Robert Burns had his speech curtailed because he stopped actively raising money so that he would not exceed the general election

spending limit and thereby trigger matching funds to his participating Democratic opponent.

In the 2008 campaign, Senator Burns' publicly funded Democratic opponent did not have any primary opposition, but still received the full cash primary disbursement amount of $12,921.00 which she was able to use against Senator Burns in the general election.

In the 2008 general election campaign, Senator Burns' publicly funded opponent received $17,707.44 in Candidate Equalization Disbursements and $10,543.98 in Independent Expenditure Disbursements, in addition to the $19,382.00 Initial General Election Disbursement, for a total public subsidy of $47,633.42 – which means that Senator Burns' publicly funded opponent had $7263.42 more than Senator Burns to run her campaign.

Senator Burns was further harmed by being labeled a "nonparticipating" candidate. The Commission engages in advertising to promote the Clean Elections Act and then labels traditionally funded candidates as nonparticipants in the "clean elections" program. In essence, the government is telling voters that participating candidates should be preferred over nonparticipating candidates.

Rick Murphy

Rick Murphy was coerced into accepting public funding in the 2004 campaign cycle because

the matching funds provision of the Act penalizes privately funded candidates.

In the 2006 general election Plaintiff-Intervenor Rick Murphy had his speech curtailed because he stopped actively raising money so that he would not exceed the general election spending limit and thereby trigger matching funds to his participating Democratic opponent.

Rick Murphy did not send out a mail piece in the 2008 primary election so as to conserve his resources for the 2008 general election in which Mr. Murphy would face three publicly financed candidates and therefore be vastly outspent.

Even though he estimated his fundraising potential to be close to $50,000, Rick Murphy decided not to actively fundraise in the 2008 general election because of the uncertainty surrounding independent expenditures and the possibility that if he had actively raised money he would have triggered $3 in matching funds for every $1 he raised beyond the general election spending limit for publicly financed candidates. Absent the matching funds provision, Mr. Murphy would have raised additional funds and thus could have engaged in any number of additional types of campaign speech, including, but not limited to additional mailings, expanding the universe of voters in the mailings he did send out, sending out larger mailings which could have contained more information and/or pieces that may have stood out more to the target audience, and hiring additional people to work at polling places.

In the 2008 general election, Rick Murphy faced three publicly funded candidates. He was penalized by the matching funds provision each time his three publicly funded opponents received matching funds based on independent expenditures. Two of his publicly funded opponents, Sheri Van Horsen and Debbie Lesko, received Independent Expenditure Disbursements of $38,764.00 for a total public subsidy of $58,146.00. His other publicly funded opponent, Shawn Hutchinson, received $6,818.76 in Independent Expenditure Disbursements for a total public subsidy of $26,200.76.

Rick Murphy was the target of an opposing independent expenditure by Victory 2008 on October 27, 2008, in the amount of $5555.47. Rick Murphy did not receive any matching funds based on this expenditure against his campaign.

Rick Murphy was the target of an opposing independent expenditure by Victory 2008 on October 27, 2008, in the amount of $435.65. Rick Murphy did not receive any matching funds based on this expenditure against his campaign.

Rick Murphy was the target of an opposing independent expenditure by Victory 2008 on October 29, 2008, in the amount of $5555.47. Rick Murphy did not receive any matching funds based on this expenditure against his campaign.

The Arizona Association of Realtors Leadership Committee made an independent expenditure in favor of Rick Murphy in the amount of $3,627.00 on October 21, 2008, for which

Mr. Murphy's three publicly funded opponents each received $3,627.00 in matching funds.

Rick Murphy's father and stepmother will not contribute to his campaigns because of the matching funds provision.

Rick Murphy was further harmed by the label "nonparticipating" candidate. The Commission engages in advertising to promote the Clean Elections Act and then labels traditionally funded candidates as nonparticipants in the "clean elections" program. In essence, the government is telling voters that participating candidates should be preferred over nonparticipating candidates.

* * *

The Plaintiff-Intervenors Arizona Taxpayers Action Committee decided not to speak in opposition to Tom O'Halleran in the Senate race in Legislative District 1 in the 2006 primary election because such speech would have triggered matching funds to O'Halleran.

Arizona Taxpayers Action Committee's based its decision of which races to participate in during the 2008 election cycle in part on whether any particular expenditure would trigger matching funds to a government funded candidate whom the Committee opposed. The triggering of matching funds reduced the chances that the Committee would speak or reduced the quantity of speech in order to avoid altogether or limit altogether the amount of matching funds to candidates whom the committee opposed.

> During the 2006 election cycle some prospective donors expressed concern that their contributions would trigger matching funds to candidates whom they did not support or opposed.
>
> In 2008, the Arizona Taxpayers Action Committee concentrated on making independent expenditures in campaigns that did not involve publicly funded candidates. For those races that did involve publicly funded candidates, the Arizona Taxpayers Action Committee limited their independent expenditures to trigger very little matching funds to candidates they opposed.

As demonstrated above, the Plaintiff-Intervenors have suffered specific restrictions, deprivations, and loss of First Amendment rights in their previous campaigns because the matching funds provisions were not enjoined. The Plaintiff-

* * *

supplement and/or amend these responses if and when they become aware of any additional responsive information or documents.

15. All documents constituting, showing, explaining, referring or otherwise relating to your allegation in Paragraph 50 of your Complaint Intervention that the Act "driv[es] private dollars out of the political arena."

Plaintiff-Intervenors are not aware of any additional documents beyond those already provided in their Initial Disclosures, prior responses to written

discovery requests, and those identified in their Privilege Log.

These responses are based on information that is currently known to Plaintiff-Intervenors and may not be conclusive. Investigation is continuing. Plaintiff-Intervenors reserve the right, and acknowledge their F.R.C.P. 26(e) obligation, to supplement and/or amend these responses if and when they become aware of any additional responsive information or documents.

Respectfully submitted this 16th day of January, 2009.

INSTITUTE FOR JUSTICE

s/ Timothy D. Keller

Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305
INSTITUTE FOR JUSTICE
William R. Maurer (WSBA #25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

[Certificate Of Service Omitted In Printing]

[1] *Admitted pro hac vice.*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF

DEAN MARTIN

(Filed Jun. 12, 2009)
(Filed Jul. 2, 2009)

Phoenix, Arizona
January 23, 2009
9:11 a.m.

and)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
Defendant-Intervenor.)

REPORTED BY:
CATHY J. TAYLOR, RPR
Certified Reporter
Certificate No. 50111

PREPARED FOR
ASCII/CONDENSED
(COPY)

* * *

[21] Q. Okay. So that the documents, just to sum up, related to when you would have held fundraisers?

A. When I would have held fundraisers. That's what I thought might be more – yesterday, that was the – I thought that might be more interesting, to show that difference. And then I remembered, wait a second, I don't think I did any fundraisers for treasurer because of the circumstances of the way Clean Elections did the match.

Q. Okay.

[22] A. I had stopped doing fundraising or I wasn't going to do fundraising if it just was going to give my opponent more of an advantage against me.

* * *

[26] Q. Approximately what amount was it?

A. Let me clarify that. It was the amount that he – my opponent, David Petersen, was going to get from Clean Elections. That he was going to get a check for $47,000 and change, and I had raised 47,000 plus. I had as much as he was going to get in his initial disbursement. And, therefore, I wouldn't – I would have – I wouldn't need to raise more money to catch up to what he'd already gotten.

And because of the way the law worked, there was a – a lot of punishment if you raised more, if you spent [27] more. Because, you know, every time you – you know, there's two things that exist on a campaign: Time and money. And both of those are – are in limited supply. And anything that I raised or spent above the amount he got, he just got that money without spending the time that it took to raise it.

So in every case where I had a Clean Elections opponent, potentially it was always all we need to do is get up to the minimum. And generally you don't want to – you don't want to spend more than that, because that puts you at a disadvantage.

Q. Have you –

A. So –

Q. Have you ever triggered matching funds?

A. I don't know. I'd have to look. I – we've – we've tried to keep our numbers from where they wouldn't. I know that – that once the Clean Elections was passed, if the – the – really everyone in the

political arena said, you know, you don't want to spend – you don't want to trigger matching funds unless you can do well more than three times the limit. You're – you're at a disadvantage unless you can raise and spend more than three times the limit.

In the treasurer's race, it's – I don't think it's possible. I don't think anyone's ever raised that much money in the history of the State.

[28] Q. The – just to clarify from that last answer, you don't know whether you've triggered matching funds before, is that correct?

A. Not off the top of my head.

Q. Okay.

A. I'd have to – I may have remembered that at one time, but not anymore.

Q. When did you make the decision to become a plaintiff in a lawsuit challenging the Clean Elections Act?

A. I don't remember. I don't remember when that was. I do remember after the lawsuit that Steve May was – that had – that finished, and then we went through the next election cycle. I believe that I was – I approached the Institute and said, this is a problem. I'd like to – would you guys like to represent me on this?

But I don't remember when that was. I'd have to look at when the case was originally filed.

Q. Okay. So you went to the Institute for Justice before the case was filed and said you thought there

was a problem with the Clean Elections Act, and you wanted to bring this constitutional challenge –

A. Yes.

* * *

---

[32] Q. Have you supported legislation to effectively get rid of the Clean Elections Act?

A. To limit, neuter or repeal in various shapes, I believe. At different times we had legislation to that effect that I supported, yes.

* * *

[36] Q. If – if the matching funds component of the Clean Elections Act was eliminated, would you still be opposed to the Clean Elections Act?

A. Yes.

* * *

[43] Q. And is it harder for challengers to raise money than it is for incumbents?

A. Oh, yes. Much harder.

Q. Okay.

A. Because you've got an existing legislator who can and did threaten other people that he would remember if they supported the challenger in the upcoming legislative session. And so a lot of people said, hey, I like you, but, you know, I can't cross this guy because I think he's going to win.

Q. Uh-huh. And that –

A. There were a few.

Q. You heard that from?

A. There were a few that did that, that did cross. That were willing to cross –

Q. Uh-huh.

A. – but not – not as many.

Q. But there was a practice of the – your opponent making threats that if –

A. He made it very –

Q. If you –

A. – clear to people.

Q. If you gave to my opponent, don't come looking to [44] me – don't come to me when it comes time for your legislation to come through the legislature, basically?

A. Yeah. I mean, he made it clear that – that you don't help – you know, anybody that supports my opponent is not going to be a friend of mine.

* * *

[69] Q. Did you in the 2006 campaign try to persuade others to not make independent expenditures?

A. In the 2006 campaign, I – it was – in every campaign, I made it very clear I don't want help. Because the – the greatest fear as a traditional candidate was someone would do an independent expenditure on your behalf. Good, bad or inept, it wouldn't help.

So I made it clear to, you know, everybody, you know, that, hey, I can handle this myself. And generally, I – a lot of people thought that I knew what I was doing in campaigns, and – and so they didn't worry about it. But I've always made it very clear to people, don't help me by doing independent expenditures.

Q. How did you make that clear to people?

A. Verbally. I mean, when you're talking to them at functions or events or they're – you know, wherever you see people.

Q. Okay. And were your instructions effective?

A. Never had an independent expenditure done on my [70] behalf, fortunately. So I avoided that problem of – of them giving my opponent more money.

Q. Okay. In the 2006 campaign, did you exceed your opposing candidate's expenditure limits?

A. I'd have to look at my records. Off the top of my head, I know the – the – the $72,000 number was the goal once we realized we can't go beyond that. Originally, we were going to go to the 120. And it was, okay, don't – it – we're punished to go farther than

that, so don't do more than that. We stopped fundraising, stopped actively soliciting. And that, for the most part, brought everything to a crawl on the fundraising side.

But I can't tell you off the top of my head that – that we got it down to the penny. I mean, we're – I know we're in the ballpark, but I don't know if we went over a little bit or not.

Q. By what date did you decide to stop soliciting contributions?

A. At which time we discovered that they were doing the – they were going to match anything I did over 72. And I don't know if I was – I think I might have already been over 72 at that point. I may have already been past that by a few thousand dollars. I'd have to look at my campaign finance reports to remember.

But at the point where we discovered they were [71] going to start matching my opponent, we said, okay, we can't do anymore because she's just going to get more and more money, and that's just – that's not helpful. You know, because it takes time to raise money. What we need to do now is spend our time doing other things and trying to be more efficient as opposed to spending time raising money. And the gap expanding between the two of us.

* * *

[Court Reporter's Certification Omitted In Printing]

U.S. District Court for the District of Arizona

(Filed Jul. 2, 2009)
(Filed Jul. 31, 2009)

[Title Omitted In Printing]

In the Matter of:

McComish and Martin v. Brewer

Chad Kirkpatrick

January 30, 2009

Griffin & Associates
3030 North Central Avenue
Suite 1102
Phoenix, AZ 85012
602-264-2230 or (888) 529-9990
pgriffin@griffinreporters.com
www.griffinreporters.com

* * *

[72] Do you recall how much money you had remaining in ATAC's, I guess, coffers, after the money spent on the District 6 litigation and the District 8 mailers.

A. I – hmm. I – I don't recall. I – I want to say it was around $2,000.

Q. Okay.

A. But that – maybe we had a debt of 2,000. I forgot which, so . . .

Q. Oh, okay. Alright. The – were there any races in 2006 that you had – besides what we've already described in District 6 and District 8, were there any [73] other races in 2006 that ATAC had contemplated becoming involved in?

A. Yes. We had a lot of discussions around the Senate – state Senate race. I believe it's District 1, which was, at the time, Tom O'Halloran, I believe, was the state senator.

Q. And what was the involvement that the – your – ATAC had discussed?

A. Primarily autodialers.

Q. Okay. And what type of involvement?

A. In the end we had no involvement. Yeah.

Q. Okay. But what was it – were you considering endorsing representative – I guess, candidate O'Halloran at the time?

A. No. It was in opposition to candidate O'Halloran.

Q. Okay. And, first of all, do you have an – do you know how much, approximately, autodialers cost?

A. At that time, I believe, our budget was around $.04 a call. Since then it's dropped by about half. But at the time, I believe, we were looking at $.04.

Q. Okay. Why has it dropped since then?

A. I think because everyone can buy them so cheap now.

Q. Oh, okay. And they were a little more expensive [74] in 2006?

A. I think it's the technology, because I know I have – I know people who have since bought their own.

Q. Oh, okay.

A. And so –

Q. Does ATAC own an autodialer?

A. No, we do not.

Q. Okay. So there's a company that will do that for you?

A. Correct. There's tons of companies.

Q. Oh, okay. What was the autodialer that you had contemplated? And you said it was in opposition to Candidate O'Halloran. Was it in support of another candidate? Or was it just simply in opposition to Candidate O'Halloran?

A. You know, I don't recall the specifics on if we were looking at just being purely negative against O'Halloran or in favor of another one, so . . .

Q. Okay. Do you recall the reasons why you were contemplating making those statements –

A. His voting record was awful.

Q. Oh, okay. That's – and if you could just – and I'm not looking for very specific – anything specific, but in general, what do you mean by "his voting record was awful"?

[75] A. He – he voted for higher spending, voted against tax cuts. Just things we stood against.

Q. Do you know if Candidate O'Halloran is a Republican or a Democrat?

A. Republican.

Q. Okay. Was it in the primary or the general that you were considering making the autodialers?

A. Primary.

Q. Okay. If – and why didn't you do that?

A. I think we – we were mostly afraid of triggering money for Candidate O'Halloran.

Q. Okay. And why did you think you would trigger money for Candidate O'Halloran?

A. Because – from what I recall, he was a participating candidate.

Q. And what was your understanding of how your negative adds would trigger money for representative O'Halloran –

A. Well, it was –

Q. – I mean, Candidate O'Halloran?

A. Yeah. As an independent expenditure we'd be making it, you know, against O'Halloran or in favor of his opponent, and so he would be matched with whatever we had spent.

* * *

[87] Q. All right. Do you – and do you know approximately when these autodialers ads ran?

A. I would say towards the end of October.

Q. Do you know if they triggered matching funds for any candidates?

A. They should have, and that's why we did it at the end of October.

* * *

---

[142] Q. Okay. Have you ever – or has ATAC ever not spent money on a campaign or for – on behalf – or – sorry. Strike that.

Has ATAC ever not spent money because of a fear of triggering matching funds?

A. I would believe that that is part of the decision process. I – I do not feel that we said we cannot get involved in this case because of Clean Elections, but it's certainly top-of-mind issue.

[143] Q. Okay. So you have never not spent money because of the matching funds provision of the Clean Elections Act?

A. Correct. I mean, we never said, "Well, this candidate's participating; therefore we're going to stay out." But when someone is or is not participating, it's definitely an important factor in our decision.

* * *

[144] Q. Okay. And who were these donors who expressed concern?

A. Just people – some of the people we met at the fundraiser, and some others.

Q. Could you give me any names?

A. Well, actually, a check we did receive from a person, Mr. Dean Reason, is also — I think he's part of the Free Enterprise Club, which is part of the case, so – because he lives in Scottsdale.

Q. So he expressed concern to you about donations that he was going to make to ATAC in 2006 because of the matching funds provision?

A. He – no. I don't think we had a conversation where he said, "I don't like this." But I believe when he found out that we were – that we had sent a mailer – because I believe he had received our mailer because he lived in Scottsdale, that he was very pleased with that and sent us a check because of that.

Q. Okay. So he never expressed concern – or he never expressed an indication that he would not donate to ATAC because of the matching funds provision. Is that correct?

A. He never specifically said that. That is [145] correct. But he's a part of the lawsuit, so . . .

Q. Okay. But he never said that to you?

A. He never said that to me, yes.

Q. Okay. Thank you.

Can you recall any other donor who said – who would fall into this description as someone who expressed concern that their contributions would

trigger matching funds – that their contributions to ATAC would trigger matching funds?

A. I don't recall any names offhand.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants,

No. CV08-1550-PHX-ROS

DEPOSITION OF J. FIFE SYMINGTON, III

(Filed Jun. 12, 2009)

Phoenix, Arizona
February 4, 2009
9:20 a.m.

REPORTED BY:
PAMELA A. GRIFFIN, RPR

Certified Reporter
Certificate No. 50010

PREPARED FOR:
CONDENSED/ASCII
(Copy)

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
)
Defendant-Intervenor.)
)

* * *

[99] Q. Was AzScam highly publicized in Arizona?

A. Yes, at the time, I think so, yeah.

IN THE DISTRICT COURT
OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JOHN McCOMISH, et al., Plaintiffs, and DEAN MARTIN, a citizen of the State of Arizona, et al., Plaintiff-Intervenors, vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, et al., Defendants, and CLEAN ELECTIONS INSTITUTE, INC., Defendant-Intervenor.	No. CV 08-550-PHX-ROS

DEPOSITION OF CONSTANTIN QUERARD

(Filed Jun. 12, 2009)
(Filed Jul. 17, 2009)

Phoenix, Arizona
Thursday, February 12, 2009
1:45 p.m.

REPORTED BY:
Kristin A. Woodall, RPR
Certified Court Reporter
Certificate No. 50196

PREPARED FOR:
ASCII
(Copy)

* * *

[32] Q. Still with this hypothetical, Clean Elections system without matching funds. As a political consultant on advising the candidate on whether to become a participating candidate, would you worry that without the matching funds your client would be placed at a disadvantage versus a non-participating candidate?

A. Absolutely.

Q. And if candidates couldn't receive matching funds, do you think they would be less likely to become participating candidates than under the present system?

A. Yes.

Q. So without matching funds, participation rates in the Clean Elections system would likely decline?

A. If the initial funding stays the same and there are no matching funds, then, yes, I would assume so. Candidates will know they get less money through that system which should make them less competitive so the system should be less attractive.

Q. And matching funds help in the sense promote candidate participation in the Clean Elections system; is that correct?

A. Yes. The more money you give them, the more of them will use the system.

* * *

[39] Q. Does the Clean Elections Act allow more candidates to run for office?

A. Yes.

Q. Do you personally know of candidates who were able to run for office because of the Clean Elections Act?

A. Yes.

* * *

[40] Q. I think you did say earlier that Clean Elections Act, the Clean Elections Act has allowed more candidates to run for office. In doing so, does it effectively increase the amount of campaigning that's taking place across Arizona?

A. I would think so.

Q. And in so doing, has the Clean Elections increased the amount of political dialogue that's taking place in campaigns across Arizona?

A. Likely. That is likely yes. I'm slow because I know one man's dialogue is another man's mudslinging, and some will view it as a plus or a negative. But, yes, if there's more money being spent on political message, whatever that message is, then there is

simply more message out there, and so I think that is the dialogue to which you're referring.

* * *

[61] Q. So you addressed my question from the perspective of a participating candidate. How about from a public policy perspective? Are there pluses to matching funds that you see?

A. I do.

Q. And what are they?

A. I appreciate the arguments against Clean Elections and can agree with some of them. I also am a – I do believe that they give you a freedom in essence to vote your conscience. It's not – and I have to be careful because it's not that you're going to not vote your conscience the other way. I don't want this to sound like again when you asked the questions about, I forget, contributions or something, it had almost a pay-to-play air to it, but you don't ever have to worry about will I be targeted or will the people that help me to get elected, you know, feel betrayed. You are free to vote your conscience.

* * *

[78] I think you said earlier that you have served as a campaign consultant for Rick Murphy?

A. Yes.

[79] Q. Did you consult with him on his 2004 campaign for the state legislature?

A. Yes.

Q. 2004 was Mr. Murphy's first time running for the state legislature?

A. I believe so.

Q. So he was running as a non-incumbent?

A. Yes. He was a challenger. I believe he was running against two incumbents.

Q. Did he face the typical fundraising disadvantages that non-incumbents would encounter setting aside Clean Elections?

A. Yes, yes.

Q. He would have had difficulty likely raising money from lobbyists for example?

A. Absolutely.

Q. He probably wouldn't have had contacts with wealthy donors?

A. Agreed. To get to the end, I think it's fair to say that in 2004 Rick Murphy would not have been elected if Clean Elections did not exist. I'm assuming that's the direction you're going.

Q. In 2004 he did choose to become a participating candidate?

A. Yes.

* * *

[84] Q. So what I want to clarify then is you've made the claim that there was selective enforcement essentially going on after the 2004 election. My question really is, is it your perception that that issue of selective enforcement has gone away?

A. Has selective enforcement gone away or did that particular issue from 2004 go away?

Q. Selective enforcement.

A. I actually think it has gotten much improved. We have new commissioners and new staff, and by and large I've been appreciative of the work they've done. They will take positions every once in a while that boggle the mind, but again, it makes for a great debate.

Q. Has Mr. Murphy been coerced into accepting public funding?

A. Coerced, I don't believe so. And he has been traditional the last couple of cycles.

* * *

[88] Q. Did you encourage Mr. Murphy during the 2008 general election to go out and raise more money from PACs?

A. To raise as much money from everywhere including PACs.

Q. You were urging him to do this during the general election period?

A. I don't remember. And remember, I had 17 legislative candidates in the general, which is a lot. So I'm [89] not going – I can't remember a lot of the specifics for any one. So whether it was during the primary or the general, at some point in time if he had told me, yeah, I'm PAC'd out, I would have stopped asking, but I couldn't tell you today if Rick ever PAC'd out or not because I couldn't keep track of all that for everybody.

Q. When you were urging him to raise more money or raise as much money as he could, what was his response to you?

A. It would generally be, you know, sure, I'm working on it, you know, always with that hint of quit bugging me.

Q. Was it ever I've stopped raising money?

A. No.

Q. Did you ever instruct Mr. Murphy to stop raising money?

A. No. I think I could lose my license for that if we had licenses. I guess I shouldn't joke when there's depositions. The written word, you can't tell if people are smiling or not.

* * *

[99] Q. – in the world of campaign consulting, is it fair to say broadly speaking as a campaign

consultant that the existence of matching funds affects the way that you strategize your campaigns for various clients?

MR. DAVIS-DENNY: Objection, form. Go ahead.

THE WITNESS: Yes. As I said, particularly with the traditional candidate in a multicandidate race where one or more is a Clean Elections candidate, it is a part of basically every spending decision that would put you over that minimum, and sometimes part of the decision is that don't because you know you only have so much to spend before you start to trigger. So you're always aware of the cost of spending that first incremental dollar.

* * *

[104] Q. (By Ms. Perkins) Let's assume for the sake of this hypothetical that the initial disbursement amount was increased, let's say up to the range you also discussed earlier to about $60,000. So your initial disbursement under this system was the amount that you had mentioned earlier, about $60,000, and there are no matching funds. What is your assessment of the potential increase of risks or potential for disadvantage under that type of system?

MR. DAVIS-DENNY: Objection, form.

THE WITNESS: I remember 60 is sort of like an [105] ideal number, and I think we talked about a lower number like 35 to 45 as still being a competitive sum. If the initial funding was that competitive sum, 45, 60, whatever it is, somewhere in

there, then I think the disadvantage or my concerns would go away.

In most cases in the absence of matching funds, I couldn't recommend clients to run Clean. I could probably construct a scenario under which it would be okay, but for serious candidates who are supposed to have a real serious chance of winning, it just takes more money than the initial funding. It's just not enough money.

If the initial funding is increased to, you know, to a much more reasonable amount, whether it's 45 or 60, wherever they go, then those concerns go away. In essence, it's almost aa improvement over the current situation because you're getting the funding, but as a Clean Elections candidate you're freed from waiting for matching funds where your opponent can wait so long to spend that they give it to you at the last minute. You can't spend it. You can't be outstrategized by your opponent. That way you get yours from the get-go. You know you're going to have X dollars and you can plan accordingly.

So there would be a lot. Obviously, the more money you give the candidates, the more attractive Clean Elections is and the less concerns a consultant would have.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE DISTRICT COURT OF THE
STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JOHN McCOMISH, et al., Plaintiffs, and DEAN MARTIN, a citizen of the State of Arizona, et al., Plaintiff-Intervenors, vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, et al., Defendants, and CLEAN ELECTIONS INSTITUTE, INC., Defendant-Intervenor.	No. CV 08-1550-PHX-ROS

DEPOSITION OF RUSSELL SMOLDON

(Filed Jun. 12, 2009)

Tempe, Arizona
Tuesday, February 17, 2009
9:08 a.m.

REPORTED BY:
Kristin A. Woodall, RPR
Certified Court Reporter
Certificate No. 50196

PREPARED FOR:
ASCII
(Copy)

[45] So you said you knew all the politicians involved in AzScam?

A. Yes.

[46] Q. Were you surprised at the time?

A. Only by two of them. The rest of them I knew were on shaky ground.

Q. And which were the two that surprised you?

A. Jim Hardigan and Don Kenney.

Q. And why did you find it surprising?

A. Because Don Kenney, the things he said in the transcripts were unbelievable to me and was not the guy that I thought I knew. And the Jim Hardigan one was, I thought was kind of overbaked. It was a minor charge that he was facing and I just know him and have known him for many, many years and know him to be a pretty honorable guy. Just got caught up in a bundling situation.

Q. And why weren't you surprised by the others?

A. They just – it just doesn't surprise me knowing them and how they acted. They were always looking for something. So I was not surprised by it.

* * *

Q. So how well known was AzScam at the time it [47] happened, just in the general public?

A. You mean when it broke?

Q. Yeah.

A. Oh, huge.

* * *

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, and ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS Clean Elections COMMISSION,

Defendants,

and

No. CV08-1550-PHX-ROS

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

30(b)(6) DEPOSITION OF DESIGNEE DANIEL RUIZ, II

(Filed Jun. 13, 2009)

Phoenix, Arizona
February 19, 2009
8:39 a.m.

CLEAN ELECTIONS INSTITUTE, INC.,
Defendant-Intervenor.

PREPARED FOR:
THE COURT
(ORIGINAL)

Reported by:
Sheryl L. Henke, RPR
Arizona CCR No. 50745

* * *

[77] BY MR. DRANIAS:

Q. You would agree that nothing in the procedures manual contains a word-to-word description of what specific steps the Commission must take to investigate an alleged unreported independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: Correct.

BY MR. DRANIAS:

Q. And with respect to your eighth step, contacting vendors for an estimate of the amount of signage – let me rephrase that. With respect to your [78] eighth step in response to Representative Ableser's allegation of an unreported independent expenditure in District 17 during the 2008 general election, in which you represented that you would contact vendors for an estimate on the amount or cost

of signs, like the sign in question, isn't it true the Commission has nothing in writing that specifies in word-to-word fashion how you are supposed to appraise the value or cost of a sign, such as the one that was at issue in District 17 by virtue of Representative Ableser's allegations?

MS. SHIPMAN: Objection, form.

THE WITNESS: In word-to-word fashion, no. The procedures manual does say the campaign finance manager will determine whether the value of the communication triggers any matching funds.

MR. DRANIAS: You got his preceding statement as well?

THE REPORTER: Yes.

BY MR. DRANIAS:

Q. In other words, there is nothing in writing at the Commission that says, when confronted with an allegation that a sign was an unreported independent expenditure, you must consult the costs reported by any specific vendor?

MS. SHIPMAN: Objection, form.

[79] THE WITNESS: Not that I'm aware of.

BY MR. DRANIAS:

Q. Does the Commission have any sort of appraisal standards for estimating the costs associated with an unreported independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: Not that I'm aware of.

BY MR. DRANIAS:

Q. Does the Commission have anything in writing that provides any guidance on how many estimates you should obtain of the cost of an unreported independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: Not that I'm aware of.

BY MR. DRANIAS:

Q. Does the Commission have anything in writing that specifies the limitations and the jurisdictions you should look to in estimating the costs of an unreported independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: Not that I'm aware of, no.

BY MR. DRANIAS:

Q. I'm assuming you were – let me ask you this question. At some point you were trained for your current position at the Commission, correct?

[80] A. Yes.

MS. SHIPMAN: Objection, form.

THE WITNESS: That's correct.

BY MR. DRANIAS:

Q. Who trained you?

MS. SHIPMAN: Objection, form.

THE WITNESS: Executive Director Lang and Deputy Director McGee.

BY MR. DRANIAS:

Q. Would you agree anything that you know about how to assess the value of an unreported independent expenditure was something you were trained to do by either Director Lang or Ms. McGee?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Do you know when you were trained to engage in the process of assessing the value of an unreported independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: During the beginning of my employment – employment in 2006.

BY MR. DRANIAS:

Q. Has – has anyone at the Commission ever made a mistaken estimation of the cost of an unreported [81] independent expenditure?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

* * *

[126] BY MR. DRANIAS:

Q. Okay. But as an ordinary part of your job at the Commission, you would be obligated to apply your understanding of what express advocacy constitutes to an independent expenditure to determine whether you should recommend it be treated as something that would trigger equalizing payments, correct?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. All right. And you would agree that express advocacy includes even publications that are made that do not use magic words, vote for, vote against, that it can be contextual, wouldn't you?

MS. SHIPMAN: Objection; form, exceeds scope of designation.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would agree that express advocacy can include positive statements or negative statements [127] against candidates that are made in the middle of an election season?

MS. SHIPMAN: Objection; form, exceeds the scope of designation.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Please read Exhibit A to Exhibit 3. And I ask you –

MS. SHIPMAN: It's this.

BY MR. DRANIAS:

Q. I ask you to read the entire thing, applying your knowledge and understanding of what constitutes express advocacy, assuming that indeed the press release shown in Exhibit A was issued during the timeframe in which it's represented to have been issued. And when you're ready, tell me what your assessment is of whether or not what's shown in Exhibit A is express advocacy.

MS. SHIPMAN: Objection; form and beyond the scope.

THE WITNESS: I have read it.

BY MR. DRANIAS:

Q. Do you have an opinion?

A. I –

MS. SHIPMAN: Objection; beyond the scope [128] of designation, form.

THE WITNESS: I believe it represents State Representative Eddie Farnsworth in a positive light, and contains express advocacy for him, given the time of the letter – press release.

BY MR. DRANIAS:

Q. Let me ask you this question. Do you have any familiarity with Representative Farnsworth's reputation regarding his ideology or his philosophical positions on things?

MS. SHIPMAN: Objection; form and beyond the scope of designation.

THE WITNESS: I do not.

BY MR. DRANIAS:

Q. Okay. Let me ask you this hypothetically. Let's assume that for the sake of this question Representative Farnsworth is a Republican who is a very socially conservative Republican supported by very socially conservative Republicans, who are for good or ill depending on your perspective, very much against equal rights for homosexuals in any respect. Assume that.

Would that understanding in any way alter your analysis of whether or not Exhibit A constitutes express advocacy in favor of Representative Farnsworth?

[129] MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Can you explain how it would affect your opinion regarding Exhibit A?

MS. SHIPMAN: Same objections.

THE WITNESS: If there was any doubt, and as a standard procedure the Commission would contact the candidate that's being mentioned and talk to them about this. It wouldn't be - the decision on whether or not it contains express advocacy for or against a candidate would be dependent on information from the candidates running for office.

BY MR. DRANIAS:

Q. Okay.

A. So I can tell you by reading it right now that it appears to present him in a favorable light. But under the circumstances where we would actually get information from Representative Farnsworth, we would be able to make a better determination of that.

Q. What does the Commission have in writing that provides a person in your position with guidance as to how far to conduct the investigation into the context of a document that presents a candidate in a positive [130] or negative light to determine whether, in fact, it is express advocacy?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: Our mission statement says we have to uphold the law, and make sure that the Act is put into place and is followed through well. And that would lead me to make sure that all – before matching funds are issued, before any consideration whether express advocacy is included in this letter, that would – that would make me want to get all the information possible in order to make the best decision and uphold the Act.

BY MR. DRANIAS:

Q. Apart from the mission statement, apart from what's in the procedures manual from 2006, apart from what's in the word-for-word language of the Clean Elections Act, apart from the administrative rules implementing the Clean Elections Act, what does the Commission have in writing that would tell you when you've gathered enough context to fully understand whether or not something like Exhibit A is or is not express advocacy?

MS. SHIPMAN: Objection; form, beyond the scope of the designation.

[131] THE WITNESS: There is no word for word procedure.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, and ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

No. CV08-1550-PHX-ROS

DEPOSITION OF DAVID LUJAN

Phoenix, Arizona
February 19, 2009
8:37 a.m.

(Filed Jun. 12, 2009)

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
)
Defendant-Intervenor.)

PREPARED FOR:
THE COURT
(ORIGINAL)

Reported by:
Sheryl L. Henke, RPR
Arizona CCR No. 50745

* * *

[7] Q. All right. Well, Representative Lujan, are you familiar with the article that I attached to the subpoena that was served on you?

A. Yes, I am.

* * *

[8] Q. Okay. Tell me what you recall about the article in the San Jose Mercury News dated September 6, 2005 attached to Exhibit 1?

A. If I recall, it was summer of 2005. I was requested to go over to California, because they were at the time considering a similar clean elections law as to what we currently have in Arizona. And so I was asked to go over to California as a clean elections candidate from Arizona and tell them my experiences as a candidate.

Q. Do you recall who asked you to go to California?

A. I knew you were going to ask me that question. It's the non-profit Clean Elections Institute. I don't know the specific name, but they're out of Washington, D.C., I believe.

* * *

[9] Q. Have you had a chance to review the article attached to the subpoena marked Exhibit 1?

A. Yes.

Q. Are you familiar with the contents of that article today?

A. Yes.

Q. Are you familiar with your reported answers to various questions in the article?

A. Yes.

Q. Is there anything in your answers that are [10] reported in the article attached to Exhibit 1 that you want to change today?

A. No, I think that they were all pretty much what I believed at the time, and I think still believe today.

* * *

Q. Would you read into the record what is ascribed to you as your statement?

A. Yes. "Arizona has actually brought the cost of the campaigns down. Before we had clean elections it was common to see $100,000 being spent in a legislative race. Now it's more common to spend around $40,000." Is that the one?

Q. Yes. Is that an accurate statement?

A. I believe so, yes. And, again, the subpoena [11] asks for documents. And I think when I made this statement it was based on my own perceptions. I don't think I did any independent research to determine that. That was just based on what I believed at the time.

Q. When you say based on your perceptions, you mean your perceptions as a politician?

A. Right.

Q. Okay. Can you describe your background as a politician?

A. Well, the first time I ran for the legislature was in 2002. I ran as a write-in candidate. I was also elected to the Phoenix Union High School District School Board in 2002. So those were probably my first two times running for political office. Prior to that I have been a staff person at the legislature; so I have been involved in politics from a staff person.

Q. What does – let me ask you this; when were you involved in politics as a staff person, what familiarity would you have developed with how much campaigns cost?

A. From about 2002 to 2004, I was the staff attorney for the senate judiciary committee, the Arizona Senate Judiciary Committee. So that committee handled all the election issues, including clean elections. And so I would have probably come up with [12] some familiarity in terms of campaigns and what was happening and campaigns through that position.

Q. Can you give me a list of the types of documents you would have reviewed as a staff attorney at the Arizona Senate Judiciary Committee that would have given you a perception of what was being spent on campaigns in Arizona?

A. I can't think of anything specific, but it may have been – and I don't remember specifically what legislation may have been going through the legislature at the time. But you get a number of documents that will talk about campaign finance in Arizona. And my thought would be perhaps I just garnered that perception just from reading various documents about Arizona elections and campaigns, probably also newspaper articles.

* * *

[14] Q. Okay. And when you said in the interview that's reflected in Exhibit 1 on page 3 of the article, when you said that it was common to see $100,000 being spent in a legislative race and now it's more common to spend around $40,000, what did you attribute that to specifically?

A. My understanding that prior to clean elections people would raise significantly more money. And then with the advent of clean elections, because the dollar amount you received from the clean election system is a fixed amount, that it usually kept the cost of those campaigns lower than what they had been in the past. And that was my perception.

* * *

[21] BY MR. DRANIAS:

Q. And when you say "weigh into," you mean it could discourage the traditional candidate from making that expenditure or engaging in that fund-raising?

A. Sure.

MS. SHIPMAN: Objection, form.

MS. SANDHU: Same objection.

MR. DRANIAS: Can I have the question read back, just so we have a clear record.

MS. SHIPMAN: Same objections.

(Requested portion of record read.)

BY MR. DRANIAS:

Q. Let me rephrase that question. Wouldn't you agree that a traditional candidate contemplating the impact of matching funds, matching any fund-raising or expenditures he or she might make, just might be discouraged in fund-raising or making expenditures?

A. Yes.

MS. SHIPMAN: Objection, form.

MS. SANDHU: Same objection.

BY MR. DRANIAS:

Q. Now, talking about the discouragement of fund-raising and expenditures by traditional candidates, have you ever had an opportunity to form an opinion as to whether that accounts for the [22] diminishment in the cost of campaigns post-clean elections?

MS. SHIPMAN: Objection, lacks foundation.

THE WITNESS: Yeah, I would think that that would certainly be a factor in why the – the cost of campaigns have gone down. Because I think more people have decided to run clean, because I think they see that that – I think that more people just decide that it's in their best interests to run as a clean elections candidate. And the more clean elections candidates you have, I think you're naturally going to see the cost of elections go down.

BY MR. DRANIAS:

Q. With respect to the possibility that the matching funds provisions of the Clean Elections Act discourage making independent expenditures by PACs and other types of committees, would you agree that that's a factor in the cost of campaigns going down post-clean elections?

A. I would agree, yes.

Q. In your statement in the article attached to Exhibit 1, the amount of $100,000 being spent before clean elections dropping to an amount of $40,000 after clean elections, I'm assuming that those are ballpark [23] estimates?

A. Yes. And I don't know if maybe at the time I had talked to other candidates, and they had said, well, this is what is typically spent in a legislative race, et cetera. It's also possible that the Clean Elections Institute, or whatever the national non-profit that had asked me to participate in this California interview session, I believe they also had provided me with talking points.

And so I don't know if they had provided me with some of that information prior to this. I didn't look prior to coming today to see if I had any sort of documents from – that they had given me, but I couldn't find any. But I do seem to recall that they gave me some talking points.

Q. Okay. So let me ask you this question. In terms of the magnitude of the reduction in the costs of campaigns after clean elections, you would agree that it's reasonably accurate to state that the cost of campaigns has dropped by more than half?

A. I would agree with that, yes.

Q. And when you say that it's reasonable, reasonably accurate to say that the costs of campaigns has dropped by more than half since the

enactment of clean elections, you would agree that a component of [24] the reduction in the cost of campaigns can be attributed to the effect that matching funds has in discouraging traditional candidates and independent expenditure committees from making expenditures in a campaign?

MS. SHIPMAN: Objection, form.

MS. SANDHU: Same objection.

THE WITNESS: Yes, I would agree with that.

BY MR. DRANIAS:

Q. And that's based on your experiences as a candidate as well as a staff attorney in the Arizona Senate Judiciary Committee?

A. Yes.

Q. And it's also based on talking points given to you by the Clean Elections Institute?

A. I believe so, yes.

MS. SANDHU: Actually, let me put in a caveat or an objection. You're not saying the Clean Elections Institute of Arizona, that's the defendant-intervenor in this case, you're saying the national organization?

THE WITNESS: Yes. And I don't even know if that was their name. It was – I think they still exist. They're in Washington, D.C. I believe it's

* * *

[25] Q. Okay. Let me direct your attention, if I could, to page 5 of Exhibit – let me rephrase that. Let me direct your attention to the article attached to Exhibit 1, specifically page 5 of that article. Towards the top where your statement begins with a bolded letter – or words "clean elections" are present. Do you see where I'm referring?

A. "In fact, independent expenditures have actually gone down since clean elections were enacted in Arizona . . . " Is that –

Q. Yes.

A. Yes.

Q. All right. I would ask you first to read what's ascribed to you as your statement, and when you're ready I will ask you some questions.

A. Sure. "In fact, independent expenditures have actually gone down since clean elections were enacted in Arizona because those people have found that the [26] impact is not as great as it used to be."

Q. The statement that you just read into the record, was it accurate at the time you gave it?

A. I think so.

Q. Is it accurate today?

A. I would say so, yes.

Q. Can you explain what you meant by it?

A. I believe it's similar to what we just talked about before, is that when somebody makes an independent expenditure, I think under clean elections they are less likely to make an independent expenditure if they see that the value of that independent expenditure is going to be weakened because it's matched by the clean elections system.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JOHN MCCOMISH, ET AL.,	)	
Plaintiffs	)	
vs.	)	No. CV08-550 PHX-ROS
JAN BREWER, ET AL.,	)	
Defendants.	)	

DEPOSITION OF BASILIO AJA

(Filed Jul. 2, 2009)

Phoenix, Arizona
February 20, 2009
1:30 p.m.

REPORTED BY:

BARBARA H. STOCKFORD, CRR/RMR
Certified Court Reporter
Certificate No. 50463

PREPARED FOR:

(COPY)

* * *

[39] Q. And how do you make a decision to make an independent expenditure?

A. A couple of ways. Part of it would flow through that process I talked about earlier where there are interviews and that. And our boards would

get reports and they would say, "I really like this person. We should help them more."

Probably more generally, it comes from our [40] members talking to the board, or maybe in some instances it might be someone on the board that says, "This is a really good person out there, we need to support them."

And so those two ways, kind, of.

Q. And have you ever or has – have you ever considered the impact that your independent expenditure might have in terms of triggering matching funds in deciding whether or not to make an independent expenditure?

A. I can recall we've discussed it. We've discussed that. In the course of making determinations, someone might ask, Does that trigger something or do something. So yeah, I'd have to say I did, yes.

Q. About how many times would you say that happened?

A. Maybe a half a dozen.

Q. And when you say you discussed it, you know, maybe that might trigger something, what do you mean by that?

A. Well, when we're going through that process about we help, and the board, you know, is saying – somebody will say, Well, we should, you know, go get an IE – independent expenditure for this person, and then someone else will say, Well, isn't there – the

opponent running clean, does that trigger or give them money? [41] And I'll answer the question, say "yes" or "no," depending on whether they're a candidate or not – I mean a Clean Elections candidate or not.

And those are generally the way the discussion kind of transpires.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, and ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants,

No. CV08-1550-PHX-ROS

ARIZONA CITIZENS CLEAN ELECTION COMMISSION 30(b)(6) DEPOSITION OF DESIGNEE

COLLEEN MCGEE

Phoenix, Arizona
February 23, 2009
12:42 p.m.

(Filed Jun. 13, 2009)

and)
CLEAN ELECTIONS)
INSTITUTE, INC.,)
Defendant-Intervenor.)

PREPARED FOR:
THE COURT
(ORIGINAL)
Reported by:
Sheryl L. Henke, RPR
Arizona CCR No. 50745

* * *

[162] Q. Going back to the issue of express advocacy, does the Commission have any best practices guidelines in writing that state how much investigation should be made of an unreported independent expenditure that doesn't use magic words, and therefore is something that must be contextually interpreted?

MS. SHIPMAN: Objection, form.

THE WITNESS: No.

* * *

[182] Q. Does the Commission have any policy, rule, or is there a law in the Act itself, and by Act I mean the Clean Elections Act, that precludes the Commission from considering mass e-mails as unreported independent expenditures?

MS. SHIPMAN: Objection, form.

THE WITNESS: No.

BY MR. DRANIAS:

Q. Do you have any understanding of how the Commission might calculate the value of a mass e-mail? Would it be something unprecedented and different from all the ways that it calculates the value of other unreported independent expenditures, or is there some set formula?

MS. SHIPMAN: Objection, form.

THE WITNESS: We don't have a set formula.

* * *

[185] BY MR. DRANIAS:

Q. Okay. Isn't there anything in writing that provides guidance to someone on staff at the Commission as to how to approach the question of what costs they should consider when assessing the value of an unreported independent expenditure?

MS. SHIPMAN: Objection; form, argumentative.

THE WITNESS: It would be contained in our procedures on implementing the election of 2002, 2004 and 2006.

BY MR. DRANIAS:

Q. And that's it?

A. That's it.

Q. Does it concern you as a representative of the Commission considering the complicated cost issues that can arise in trying to assess the value of an independent expenditure, that there is nothing besides the procedure manuals, the Act itself, and the rules promulgated under the Act?

MS. SHIPMAN: Objection; form, and beyond the scope of designation.

THE WITNESS: The majority of the issues [186] that are unreported, the individual or entity gives us that information. So we don't need to value it ourselves. That entity gives us the value for – tells us exactly what the cost was.

* * *

[187] BY MR. DRANIAS:

Q. With respect to Exhibit 3, the declaration of Barbara, I think it's McCullogh, on behalf of Equality Arizona, it's true that no matching fund contribution was made as a result of the communication that Equality Arizona made, correct?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: I'm not aware of this. This is the first time I've seen this. So I'm not aware of any matching funds was produced for this news release.

BY MR. DRANIAS:

Q. Okay. Wouldn't you agree that determining whether or not an unreported independent expenditure constitutes express advocacy is a difficult decision?

A. Yes.

MS. SHIPMAN: Objection, form. Go ahead.

[188] THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Wouldn't you agree that reasonable people, particularly when magic words are not used, can disagree over what constitutes express advocacy in an unreported independent expenditure?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Doesn't that concern you as a representative of the Commission, that the Commission can grant matching funds based on a determination that reasonable people can disagree over?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: No.

BY MR. DRANIAS:

Q. Why not?

A. Because the law gives us the guidelines to follow by issuing matching funds. And it doesn't have to have the trigger words for it to be considered matching funds. It leads the reader to believe one way or the other regarding the information. That's – to me it's not that difficult. I mean, it's an issue that

* * *

[191] BY MR. DRANIAS:

Q. When the Commission takes the testimony they hear into consideration in ruling whether or not an independent expenditure is express advocacy or not, are they governed by any written standards, apart from the procedures manual, the Clean Elections Act, and the rules and policies promulgated pursuant to the Act?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: They have legal advice. They can seek legal advice.

BY MR. DRANIAS:

Q. And that's it?

MS. SHIPMAN: Objection, same objections.

THE WITNESS: As far as I know, yes.

BY MR. DRANIAS:

Q. As far as you know, yes?

A. Yes. As far as I know, that is their only information that would be available to them.

Q. Right.

A. Our attorney might have more information that [192] they could give to the commissioners.

Q. Okay. Let me try to wrap this up. You would agree that Commission staff, such as Mr. Ruiz, when confronted with an alleged unreported independent expenditure that requires more context than just looking at its words, that there is no policy in place requiring that staff member to go and contact constituents of the candidate in question?

MS. SHIPMAN: Objection, form.

THE WITNESS: That's correct; we do not contact the constituents.

BY MR. DRANIAS:

Q. Okay. Let's go back to the open borders example, or the – I understand there were a couple of signs out there. Pick either one of them, open borders, raise taxes, whatever. If a candidate's constituency in fact supports raising taxes and open borders, is it really a sufficient methodology to determine whether or not an independent expenditure is really supportive or against that candidate not to ask his constituents how they feel about it?

MS. SHIPMAN: Objection; form, beyond the scope of designation.

THE WITNESS: The issue of the signs on open borders, the independent expenditure, we contacted [193] the candidate that said candidate A, vote for candidate A if you like open borders. And we asked them, is this – is this your issue. I mean, do you agree with open borders. And, of course, they came to us, and they said no, this is a hit piece. Of course no one would want open borders in Arizona.

So it's very obvious that that was not their issue, open borders was not their issue. And it was, in fact, a hit piece against them. They were hoping that that issue would defeat that candidate. At least that's what the candidate felt when they told us their side of the story.

BY MR. DRANIAS:

Q. I understand that. All I'm saying is this; wouldn't you agree that the candidate who stands to gain from matching funds just might take that position on an ambiguous situation so they can get matching funds?

MS. SHIPMAN: Objection; form, beyond the scope, incomplete hypothetical. Go ahead.

THE WITNESS: I think the candidates have a little bit higher standard than that.

BY MR. DRANIAS:

Q. Well, does the Commission ever consider that when they ask a candidate who stands to gain matching [194] funds from its decision, that maybe they should not weigh that candidate's opinions as much as the person who has nothing to gain?

MS. SHIPMAN: Objection; form, beyond the scope of the designation.

THE WITNESS: I wouldn't be able to answer that question.

BY MR. DRANIAS:

Q. All right. Let me put it this way. Does the Commission have any policy in place to control for bias of the people that they ask about unreported independent expenditures?

MS. SHIPMAN: Objection; form, beyond the scope of the designation.

THE WITNESS: No.

* * *

[Court Reporter's Certification Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, and ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

JAN BREWER, in her official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS Clean Elections COMMISSION,

Defendants,

and

No. CV08-1550-PHX-ROS

DEPOSITION OF LORI DANIELS

(Filed Jun. 13, 2009)
(Filed Jul. 17, 2009)

Phoenix, Arizona
February 25, 2009
10:07 a.m.

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

PREPARED FOR:
(copy)

Reported by:
Sheryl L. Henke, RPR
Arizona CCR No. 50745

* * *

[6] Q. Commissioner Daniels, what is your current precise title and responsibility at the Arizona Citizens Clean Elections Commission?

A. I am a commissioner. And my responsibility is to attend meetings and set policy and make sure that the Clean Elections law is enacted as according to statute.

* * *

[67] Q. You would agree that whether or not an unreported expenditure such as one like the Project for Arizona's Future constitutes express advocacy is a difficult question over which reasonable minds can disagree?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would agree that the availability of matching funds can influence whether a candidate makes or doesn't make expenditures?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would agree that the availability of matching funds can influence whether an independent expenditure committee makes or doesn't make expenditures?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would agree that the availability of matching funds influences whether or not ordinary citizens make or don't make contributions to [68] candidates?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Wouldn't you agree that if reasonable minds can disagree over how to characterize something that is being alleged to be an unreported campaign expenditure or independent expenditure, that it could

chill the willingness of people to make those expenditures for fear of triggering matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Did that come through? The objection didn't obscure anything?

And when I use the word "chill," explain to me what you understood that to mean.

A. I would understand that people would hesitate to spend money on an outside expenditure expressly advocating that a candidate get elected if they know that the other candidate is going to get matching funds in order to be able combat whatever it was that was presented.

* * *

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[71] BY MR. DRANIAS:

Q. Okay. When Executive Director Lang has advised the Commission that Judge Silver has now twice ruled, albeit preliminarily, that in her opinion the matching funds provisions of the Clean Elections Act violate the First Amendment, did you ever have any conversation with other members of the Commission about that?

MS. SHIPMAN: Objection: form, asked and answered.

THE WITNESS: We were updated. Other commissioners may have – I think we all are aware that if matching funds go away, the chance of candidates running as Clean Elections probably would stop or would put a real damper on that. But I don't know that anybody personally said, well, this is horrible, this is a bad ruling. I don't ever remember that conversation, although there may be some in the minutes. I guess to me it was just this is a judge's ruling and we have to just see where we go from there.

* * *

[74] Q. Do you – well, and I don't mean to be flippant in asking you this. Here you are on a body that has as its responsibility the enforcement of laws that you regard as unconstitutional. Can you explain how that affects your decision making?

MS. SHIPMAN: Objection, form.

THE WITNESS: Absolutely. I, at my second meeting, made it very clear where I stood as far as Clean Elections. I don't believe in publicly funding elections. I'm not an advocate of this in any way, shape or form. But it is the law and it was voted on by the people.

And I moved on to this Commission and was appointed to it with the whole idea that I wanted to make sure that candidates that choose to run Clean Elections don't fall into the pitfalls of making

mistakes and getting thrown off the ballot, getting in trouble, getting fined.

So my role as a commissioner is not only to set policy and make sure that the law as it is on the books right now is enforced, but to help candidates who are going to take this road to make sure they knew what they was doing.

[75] So, no, do I like the system? No. And there isn't a person on the Commission or on the staff that aren't aware of that.

* * *

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[81] Q. Okay. You're aware of the allegations in this case and perhaps by others, I don't know, that 6 per cent is not a reasonable estimate of the value of both the time and the expense involved in fund-raising as a traditional candidate?

A. Yes.

Q. What's your opinion on that issue?

A. I do believe that Clean Elections sets it up unfairly when you're running against a traditional candidate as far as what the cost is on running for office. In other words, you have a fund-raiser that's a dinner, and the expense of the dinner is there. And depending on how matching funds work, the Clean Elections candidate gets the matching funds. And, yes, [82] I think that is a chilling effect, and I've always felt that way.

Q. Okay. You said the word "traditional candidate" at the beginning, and I think you meant "participating"?

A. Yes.

Q. Why don't we have the answer read back, because I don't want to put words in your mouth and you just tell me if my sense was correct. If we can have the question and answer read back.

(Requested portion of record read.)

BY MR. DRANIAS:

Q. Okay. When you said when you're running against a traditional candidate in that answer, you meant when you're running against a participating candidate?

A. Yes. What I meant was the traditional candidate running against the participating one, yes, I think it has a chilling effect.

Q. All right. So you would agree that the true cost in resources for a traditional candidate in fundraising to support his campaign is greater than 6 per cent of the dollar cost of any particular expenditure or contribution?

MS. SHIPMAN: Objection, form.

[83] THE WITNESS: The majority of the time, absolutely.

BY MR. DRANIAS:

Q. Okay. Now, I share your opinion. I suspect you have more reasons to have your opinion than I do. What do you base your opinion on?

A. As far as the cost for campaigning?

Q. Yes.

A. Oh, just in particular having run as a traditional candidate, you have a reception, you have a dinner. The costs are – it wouldn't be unusual to have a campaign fund-raiser where you raised $5,000 and it cost you a thousand to have it. And that's personal experience.

You're only allowed so much – you know, people to offer up food and drink. The rest are expenses. There's expenses of sending out invitations. There is expenses of the cost of food, all of that, and it's obviously more than 6 per cent.

Q. And we haven't even gotten to the cost or the time value of the time expended by the candidate, correct?

MS. SHIPMAN: Objection, form.

THE WITNESS: Correct.

* * *

[89] Q. But then at the beginning of your answer, you said there was no chilling effect in –

A. Well, it is not no chilling effect. I'm saying that – you said there is always a chilling effect. And I wouldn't say that, because I have to be real honest. When I ran for office, money was not – money may have been the reason I lost, but it was never a number one priority. Debates, meeting with people, [90] doing all that was my priority. I never liked raising money. So matching funds, participating candidates didn't really play into what I was thinking when I was running for office.

Q. Okay.

A. So there was no chilling effect for me personally. So when you say there's always a chilling effect, maybe I'm the exception. Maybe that's why I'm not in office anymore.

Q. Well, let me ask you this, this way. For those individuals who are aware of the impact of matching funds and for those individuals who are engaged in decisions about fund-raising or expenditures in support of their campaign, wouldn't you agree that there would always be a chilling effect of some magnitude on their fund-raising and expenditure decisions?

MS. SHIPMAN: Objection, form.

THE WITNESS: Again, you use the word "always," and, again, I will think of one other candidate that I don't know that it would have a chilling effect on, and that would be president Bob Burns. He would always run traditional. And I don't think whatever matching funds were there had an effect on

what he did. And I could be wrong. I've known Bob [91] for over a decade.

But that's when you use the word "always," you're going to lose me. The majority of the time, is it a chilling effect with matching funds, yes.

BY MR. DRANIAS:

Q. Okay. When Tony Bouie in his testimony has said that when he didn't fully understand the system as a traditional candidate, he didn't understand just how disadvantageous matching funds made him, would you think that's an unreasonable and unusual position to take?

MS. SHIPMAN: Objection; form, misstates the Mr. Bouie's testimony. Go ahead.

THE WITNESS: I don't – I wouldn't know. I met Mr. Bouie once in a public meeting so I – it could. I don't know him. So I don't know what he said. I can tell you why I think he lost, and I don't think it was the matching funds.

BY MR. DRANIAS:

Q. Well, I'm not asking that question.

A. Okay.

Q. Well, you would agree, though, when Tony Bouie testifies in his declarations that his decisions on whether to raise or spend money were affected by the presence and availability of matching funds to his

[92] competitor, that there is nothing inherently incredible about that?

MS. SHIPMAN: Objection; form, lack of foundation. She has no idea what the intent of Mr. Bouie was or was not in making this – any kind of declarations. Go forward.

THE WITNESS: If he stated that it had an effect on him, then – I'm going to give everybody the benefit of the doubt and believe him.

BY MR. DRANIAS:

Q. But it's not just an arbitrary decision to give Mr. Bouie the benefit of the doubt; you yourself have just said that the majority of the time matching funds has a chilling effect, right?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

* * *

[97] Q. Let me ask you it this way. In the past eight years, how many candidates have you met with whom you would be familiar of their candidate and candidacy strategies?

MS. SHIPMAN: Objection, form.

THE WITNESS: 10.

BY MR. DRANIAS:

Q. Out of those 10 individuals how many of them would have not been chilled by the presence of matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: It would be a guess, but I would say two out of the ten.

BY MR. DRANIAS:

Q. You would agree that in your experience, to the best of your knowledge and recollection over the past eight years, at least 80 per cent of the candidates whose strategies you knew as a candidate [98] would be chilled by matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: That would be an estimate, yes.

BY MR. DRANIAS:

Q. It would be a reasonable estimate?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Okay. None of those are my clients, are they?

A. That's privileged.

Q. Is it?

A. No.

Q. No, seriously –

MS. SHIPMAN: Who are your clients?

BY MR. DRANIAS:

Q. Do you know – my clients are John McComish, –

A. I know Mr. McComish.

Q. – Tony Bouie and Nancy McLean.

A. I don't know Nancy McLean at all. I've met Tony Bouie once. I know John McComish, but I wasn't involved with his campaign in any way. So I don't know where he would be coming from, but –

Q. Okay. So you have no reason to dispute the [99] claims of my clients that they have been chilled by matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: Absolutely. I would say that there would be – there would be no reason for them to lie. If they're stating that, I believe them completely.

BY MR. DRANIAS:

Q. Okay. And there's nothing inherently incredible about my clients' testimony that they have been chilled by matching funds in the course of their candidacies?

MS. SHIPMAN: Objection, form.

THE WITNESS: That's correct.

* * *

[130] Q. To make it more concrete, you would agree that the presence of matching funds can operate as an influence on independent groups such as PACs, to change the content of their messages so as to avoid express language that is obviously express advocacy?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would also agree that when it comes to a communication that's meant to support or oppose a candidate, it's generally more effective to say so plainly?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. You would agree that one of the influences that matching funds creates on independent groups such as PACs then is to render their messages of support for a candidate less effective?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

* * *

[183] Q. Wouldn't you agree, though, that the instance of the sign that says "Support Ableser – Open Borders" is an instance of someone using misleading signage to actually have the opposite effect of what it's exhorting people to read the sign to do?

MS. SHIPMAN: Objection; misstates contents of sign at issue, form.

THE WITNESS: I would say in both participating candidates and traditional candidates that that happens on a regular basis during campaigns. That you miss – that you state something in hopes of defeating that candidate, not in support of that candidate. That's been a campaign tactic since campaigns began.

BY MR. DRANIAS:

Q. Now, that campaign tactic, has it ever been used for the purpose of triggering matching funds?

MS. SHIPMAN: Objection, form.

[184] THE WITNESS: Not that I'm aware of. But I wouldn't say it hasn't happened; it's just not what I'm aware of.

BY MR. DRANIAS:

Q. Is there anything apparently incredible about the idea that campaign expenditures or independent expenditures might be made less than honestly for the purpose of triggering matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: It could happen.

BY MR. DRANIAS:

Q. In particular, though, when the Commission was considering the complaint – I think it was brought by Mr. Ableser; isn't that correct?

MS. SHIPMAN: Objection, form.

THE WITNESS: I'm pretty sure it's correct, but again – I have the transcript but I don't have my documentation from the agenda. But I think that's who brought it, but I wouldn't want to state absolutely that that's the case.

BY MR. DRANIAS:

Q. Okay. The complaint that was brought by whoever regarding the posting of signage stating "Support Ableser – Open Borders," as shown on page 28, line 12, wouldn't you agree that that complaint is an [185] instance of someone gaming the system in general?

MS. SHIPMAN: Objection, form. Again, it misstates the contents of the sign at issue.

THE WITNESS: I don't think it's gaming the Clean Elections system. I think it's just gaming the campaign system in general. When I say that – because I don't think this is unique to whether Clean Elections occurs or not. People try to game the system all the time.

I mean, push, pull, that state, you know, well, would you support this candidate if you knew that they're against fire and police. You know, it's a push, pull type thing. It misstates what is accurate in the campaign. And I think it probably happens as much in traditional campaigns as it does in Clean Elections.

BY MR. DRANIAS:

Q. All right. But the difference in a Clean Elections system is that when someone uses the gaming that you've just described, it has the potential of the government deciding to trigger matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: I agree.

BY MR. DRANIAS:

Q. Right. Whereas in the absence of the Clean [186] Elections system, gaming through deceptive methods such as appearing to support someone when saying things that will obviously bring opposition to that candidate, will only have the effect of diminishing their political support?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Wouldn't you agree that the availability of matching funds magnifies the impact of gaming

strategies such as was at issue in the case that was brought by Mr. Ableser?

MS. SHIPMAN: Objection, form.

THE WITNESS: That would – I can't agree with that, because that would state that I thought this instance was gaming the system. And I think this instance was strictly trying to get Mr. Ableser unelected, not reelected. That's where I think this one was coming from. I don't think it was a gaming of the system to trigger the matching funds. Yes, it did trigger matching funds, I would agree with that, but I don't think that was a gaming of the system in this instance.

BY MR. DRANIAS:

Q. But you would agree that, leaving aside the [187] Ableser circumstance, the fact that matching funds might be triggered by something that appears to engage in express advocacy, gives people an incentive to try to create express advocacy that is not meant to support a candidate even though it appears to, so that they have the double whammy of both triggering matching funds to their preferred candidate and harming the political support for the candidate who was the subject of the message?

MS. SHIPMAN: Objection, form.

THE WITNESS: I'm sure there are some devious people out there that probably would do that.

BY MR. DRANIAS:

Q. Well, it's par for the course in politics, isn't it?

MS. SHIPMAN: Objection, form.

THE WITNESS: I personally will tell you that that's not anything I would have ever done, and I was in politics far a long time. So there are good players and bad players.

BY MR. DRANIAS:

Q. But you would agree that there are some aggressive campaign strategies used in politics, correct?

MS. SHIPMAN: Objection, form.

[188] THE WITNESS: I think there are some unethical ones also.

BY MR. DRANIAS:

Q. Of course. And you would agree that the incentive to use misleading expressions of support for a candidate is enhanced by the presence of matching funds that they could trigger?

MS. SHIPMAN: Objection, form.

THE WITNESS: Sure.

BY MR. DRANIAS:

Q. In general, though, with respect to the Ableser decision that did ultimately arise, to me it looked like a tortured decision. It didn't seem to be an

open and shut case, even though you seemed to summarize it that way. Is my impression incorrect?

MS. SHIPMAN: Objection, form.

THE WITNESS: No, I don't think it was – it wasn't an open and shut case. Because some people do advocate open borders and there are some people that would support that. And I think that was in the back of some people's minds. But it came down to the conclusion of the Commission that, no, this was not trying to get people to support Mr. Ableser, it was trying to get them to not support them.

BY MR. DRANIAS:

[189] Q. As I read the transcript dealing with the Ableser signage issue, it seemed to me that the only written standard that the Commission considered and that was argued from was found in the Act, the Clean Elections Act itself?

MS. SHIPMAN: Objection.

BY MR. DRANIAS:

Q. Is that a correct impression?

MS. SHIPMAN: Objection, form.

THE WITNESS: I believe so.

BY MR. DRANIAS:

Q. To your knowledge, with respect to the Ableser circumstance of a misleading expression of

support for a candidate, are there any other written standards that the Commission has ever consulted?

A. Not that –

MS. SHIPMAN: Objection; form, asked and answered.

THE WITNESS: Not that I'm aware of.

BY MR. DRANIAS:

Q. Are you aware that the staff when it investigates misleading expressions of support or, for that matter, misleading expressions of opposition, that it does not customarily conduct an investigation of the opinions of the constituency of the affected candidate?

[190] MS. SHIPMAN: Objection, form.

THE WITNESS: If you're asking does a staff go out and talk to the constituents to see if what they were advocating is true or false, it's not my understanding that they would. And I don't think we have the manpower to do that.

BY MR. DRANIAS:

Q. Okay. Let me put some more meat on that bone. You would agree that Mr. Ableser is in a Democrat-dominated district?

MS. SHIPMAN: Objection, form.

THE WITNESS: Actually, my understanding is that 17 was – it's been Republican a lot. It's a real swing district. You've had Laura Knaperek. It is

– in the last couple of years has swung more towards the Democrats. But it's been Republican for a number of years too. So that's one of the more swing districts than a lot of the all Democrat or all Republican.

BY MR. DRANIAS:

Q. Okay, fair enough. You certainly would know that better than I.

Let me ask you this hypothetically then. Assuming you have a Democrat-dominated district, legislative district. Assume further that, again only [191] hypothetically, overwhelmingly Democratic party members support open borders. Assume in that context a sign was sent out to support the Democrat candidate in that Democrat dominant district where the majority of Democrat voters support open borders, said the same thing as the sign at issue in Ableser. How do you think the Commission would come down on it?

MS. SHIPMAN: Objection; form, incomplete hypothetical.

THE WITNESS: I don't think that unless there was a complaint the Commission would ever even look at it. And if you're in a Democratic district that supports open borders and somebody puts up a sign saying that, I don't know that anybody would bring a complaint to the Commission regarding it. So I don't think it would be an issue ever dealt with by the Commission.

I think this was definitely dealt with because this is a swing district. And there are a number of people

in that area that don't support open borders. You know, that's – that's what I think is the reason here.

If a complaint was brought forward I think the Commission would look at it at that point in time and see if, you know, we felt like matching funds [192] should be issued or not. That's a hard – because it's hypothetical, I can't always answer it.

But I don't know that in a Democratic district anybody would have a problem with that any more than in a Republican district, if you had somebody who was pro life and you put pro life in front of them, that that would trigger matching funds necessarily either, because I don't know that there would be a complaint.

BY MR. DRANIAS:

Q. Well, what I'm getting at is this. You would agree that when the Commission tries to understand the impact of a statement such as was contained on the signage affecting Mr. Ableser, as shown in Exhibit 7, one of the things it has to assess is the constituency of that candidate and whether they support messages like this?

MS. SHIPMAN: Objection, form.

THE WITNESS: That's a difficult one again to answer. And the reason I'm saying that is, I think if it was a Democratic group and somebody did come up forward with the complaint, we would look at it very seriously. Whether or not we would take into accounts that constituency, I don't think we can guess

what the voters are going to do. I think that's beyond [193] our boundaries.

So my guess is, and again it's hypothetical, that if somebody from an open border Democratic district put the signs up and then brought a compliant, we would probably in that instance issue matching funds the same way if, you know, we felt like it was an advocacy position.

I know that sounds kind of contradictory, but I don't think we have the right as a commission to say, this is all Democrat, they all support open borders. This isn't going to fly. I don't think that's a decision we make. I think that's what whoever is filing that complaint is saying. This is really going hurt me in my district, even though it's Democratic, because they don't want open borders, they're tired of the illegals. You never know.

There is a lot of rural Democratic districts that probably an open border sign could really hurt a Democratic candidate, if you're along one of those border towns where the illegals are coming through all the time.

BY MR. DRANIAS:

Q. On the other end if you're Mr. Saban running in Guadalupe, a sign like was used for Mr. Ableser could have an entirely different effect, correct?

[194] A. Mm-hm.

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Which begs the question of how is it that the Commission can assess whether a sign is truly supportive or not without considering the constituency of the candidate in the district that it affects?

MS. SHIPMAN: Objection; form, asked and answered.

THE WITNESS: That's when the Commission would look at who made - who filed the complaint and if there was any counter-complaint. In other words, in this circumstance Mr. Ableser was the only one there. If there had been somebody that came in and said, no, I put those signs here, because I want him to get elected and this isn't negative, we probably would have looked at it differently.

All we can look at is the facts that are in front of us. And that's when a complaint is filed and the information is given at that time. It was a matter of public record that this was on our agenda. So if somebody had come forward and said, I put this out here because he does support open borders and I think that will help him. And I think this may be the [195] one that they did that, actually.

And so we look both ways to see – I would think as commissioners we're like anybody else. You look at the facts and you decide who you want to believe. And it's like a jury or any other board; you sometimes make decisions that sometimes they may be wrong, sometimes they're right. You do what you believe is

the best thing to do and the right thing to do, according to where the rules are and the clean air – the Clean Elections Act.

* * *

[240] Q. Tell me what you now recall.

A. Well, I recall, because I looked at the sign in the memorandum, that there – I don't remember how many signs there were or anything else, but that they promised to raise taxes. Again, this is the same thing I would get back to in support of illegals.

That I don't see too many Democrats [241] saying I want to raise your taxes. I see them say I want to do away with tax loopholes. We need to quit doing tax credits. But anybody in their right mind that wants to get elected isn't going to admit that they want to raise your taxes.

Q. Going back to Exhibit 12, wouldn't you agree that the request for matching funds came from a representative of Jeff Dial?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Yes?

A. Yes.

Q. Okay. Wouldn't you agree that there is no indication in Exhibit 12, which is Todd Lang's

recommendation memorandum, that Mr. Maish or Ms. Waters requested matching funds?

MS. SHIPMAN: Objection, form.

THE WITNESS: Yes.

BY MR. DRANIAS:

Q. Wouldn't you agree that the recommendation made by Todd Lang to issue matching funds for Ted Maish and Rae Waters was made by him independently of any request by Mr. Maish or Ms. Waters?

MS. SHIPMAN: Objection, form.

[242] THE WITNESS: By Maish or Waters, correct. But there was an action asked to be taken by the Commission in the request from Ryan Ducharme. So the Commission acted in response to that request.

BY MR. DRANIAS:

Q. But in effect a request by a candidate in competition with Mr. Maish and Ms. Waters for matching funds resulted in an issuance of matching funds for Mr. Maish and Ms. Waters without any requests by them to do so?

MS. SHIPMAN: Objection, form.

THE WITNESS: That's correct. Be careful what you ask for.

* * *

[293] Q. Okay. So as you understand it, the Clean Elections Act does not prohibit the voluntary bundling of five-dollar qualifying contributions?

MS. SHIPMAN: Objection, form.

THE WITNESS: If there is something in the Act that there is a qualification on numbers, I'm not aware of it. And maybe that's my ignorance. There could be. I just know that I personally have gotten out and I will help eight or nine candidates. And I'll get everybody in my family to give five dollars to each candidate and collect the money. And every friend I've got to do that. And I hope I haven't been doing anything illegal.

* * *

[294] Q. Okay. Is that practice an unusual one that only you engage in, or do you see a lot of people doing it?

MS. SHIPMAN: Objection, form.

THE WITNESS: I think most people do it that way. If you're going to – most people go, oh, five bucks, no big deal. And if you have four candidates, they will give, you know, five dollars for each one.

* * *

[302] Q. The bottom line is that the Clean Elections system and its method of qualifying candidates for access to public financing is not more likely to reduce corruption or the appearance of corruption than the traditional way of fund-raising?

MS. SHIPMAN: Objection, form.

THE WITNESS: I've publicly stated that, so that's not anything I wouldn't agree with. I have publicly stated that I don't think that Clean Elections or traditional elections takes the dirty politics out of it. It is what it is when it's dirty, and when it's not, then it's what it's supposed to be.

BY MR. DRANIAS:

Q. And so if one of the purposes of the Clean Elections Act is to reduce the degree of corruption or the appearance of corruption that exists under a traditional fund-raising system, it's not going to achieve that purpose?

MS. SHIPMAN: Objection, form.

THE WITNESS: I do agree.

* * *

[Court Reporter's Certification Omitted In Printing]

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

CITIZENS CLEAN ELECTION COMMISSION

10 YEARS of CLEAN ELECTIONS in ARIZONA

2008 Annual Report

Chair

Gary Scaramazzo

Commissioners

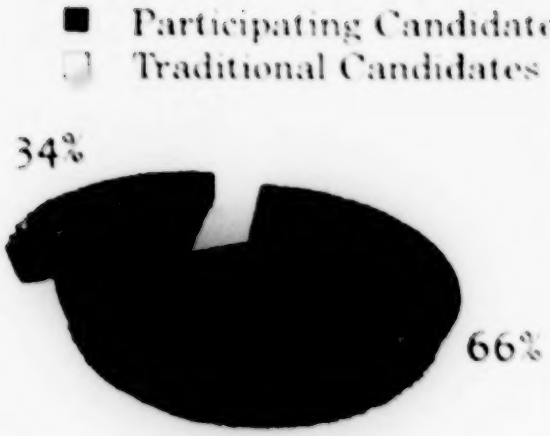
Royann J. Parker
Jeffrey L. Fairman
Donald W. Lindholm
Lori Daniels

1616 W. Adams St. Phoenix, Arizona 85007
telephone: 602-364-3477 | toll free: 1-877-631-8891
www.azcleanelections.gov | ccec@azcleanelections.gov

2008 Election Statistics

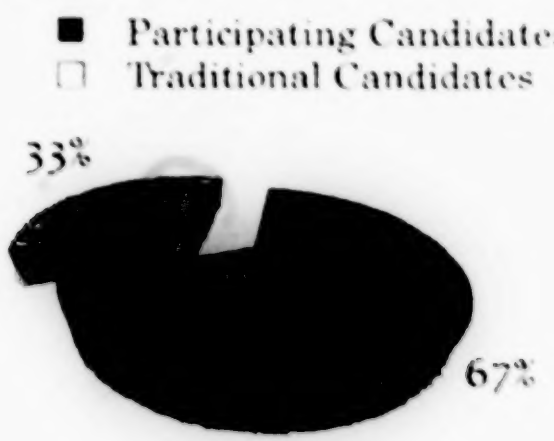
Primary Election

In the 2008 Primary Election a total of 190 candidates sought election to a State or Legislative office. Of the 190 candidates, 126 chose to participate in the Clean Elections system. A total of $3.3 million was distributed to participating candidates during the Primary Election cycle.



General Election

In the 2008 General Election a total of 160 candidates sought election to a State or Legislative office. Of the 160 candidates, 107 were candidates who chose to participate in the Clean Elections system. A total of $4.5 million was distributed to participating candidates during the General Election cycle.



IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, NANCY MCLAIN, KEVIN GIBBONS, FRANK ANTENORI, TONY BOUIE, AND DOUG SPOSITO,

Plaintiffs,

and

DEAN MARTIN, ROBERT BURNS, RICK MURPHY, ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, AND ARIZONA TAXPAYERS ACTION COMMITTEE,

Plaintiff-Intervenors,

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, et al.,

Defendants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

No. CV 08-1550-PX-ROS

DEPOSITION OF STEPHEN JAMES VOELLER

(Filed Jul. 17, 2009)

Phoenix, Arizona
February 26, 2009
9:07 a.m.

REPORTED BY:
WILMA A. WEINREICH, CSR, RPR
Certified Reporter
Certificate No. 50530

PREPARED FOR:
(ASCII/MUS/CD/ETRAN)

* * *

[52] Q. So in practice, the PAC donates money to Arizonans For a Sound Economy, which to turn makes the independent expenditures; is that correct?

A. That is correct.

* * *

[60] Q. Did you make an independent expenditure –

MR. KELLER: Thank you.

BY MS. NEUBAUER:

Q. – on behalf of Sylvia Allen's campaign knowing that it would trigger matching funds for her opposition?

A. Yes.

Q. The next paragraph reads: Arizonans For a Sound Economy made an independent expenditure in opposition to Bill Jeffer's campaign for state senator in District 5 in the amount of $4,875 which triggered – on October 27th, 2008, which triggered matching funds to a candidate the Arizona Free Enterprise Club's Freedom Club PAC opposed.

Is that correct?

A. Yes.

Q. Did you make the decision to donate 4,087 – sorry, did you make a decision to make an independent expenditure in the amount of $4,875 on behalf of Bill Jeffer's campaign?

A. Yes. And just to clarify, it's one expenditure of the combined total. But the law requires you, if the [61] piece has both people, you divide it in two.

Q. So they were running as a slate?

A. No. They were running – the piece had both – featured both of them. They were running against each other.

Q. So Bill Jeffer and Sylvia Allen were running against each other?

A. Correct

Q. But you supported both of them?

A. No.

Q. Sorry. I see what you're saying.

You supported Sylvia Allen; is that correct?

A. That's correct.

Q. And you opposed Bill Jeffer?

A. That's correct.

Q. And your expenditure in opposition to Bill Jeffer triggered matching funds for Bill Jeffer?

A. That is correct.

Q. And you made that expenditure knowing it would trigger matching funds?

A. That is correct.

Q. The next paragraph starting at Line 19 reads: Arizonans For a Sound Economy made an independent expenditure in opposition to Nancy Young Wright's campaign for state representative in District 26 in the amount of [62] $17,250 on October 27th, 2008, which triggered matching funds to a candidate the Arizona Free Enterprise Club's Freedom Club PAC opposed.

Is that correct?

A. That is correct.

Q. Did you make the decision to spend $17,250 in opposition to Nancy Wright's campaign?

A. Yes. In conjunction with other folks who supported that effort.

Q. Who else was involved in that decision?

A. Tom Farley from Realtors.

Q. From?

A. The Realtors PAC.

Q. So did the Realtors PAC also participate in that same independent expenditure?

A. Yes.

Q. So it was a joint independent expenditure by two PACs; is that correct?

A. It was paid for by the Freedom Club PAC and the Realtors PAC.

Q. Thank you.

Did you make that independent expenditure knowing it would trigger matching funds for Ms. Wright?

A. Yes.

Q. If you will look at the next paragraph, starting [63] at – I promise this will be over soon. Line 25 on Page 42: Arizonans For a Sound Economy made an independent expenditure in opposition to Cheryl Cage's campaign for state senator in District 26 in the amount of $17,250 on October 27th, 2008, which triggered matching funds to a candidate the Arizona Free Enterprise Club's Freedom Club PAC opposed.

A. That is correct.

Q. Did you make that decision to spend $17,250 in opposition to Ms. Cage?

A. Yes.

Q. And was that decision also made in conjunction with the Realtors Association?

A. Yes.

Q. Did you make that expenditure knowing it would trigger matching funds for Ms. Cage?

A. Yes.

Q. Let's move on to the next paragraph on Page 43, beginning at Line – between Lines 3 and 4 that states: Arizonans For a Sound Economy made an

independent expenditure in opposition to Cheryl Cage's campaign for state senator in District 26 in the amount of $17,250 on October 29th, 2008, which triggered matching funds to a candidate the Arizona Free Enterprise Club's Freedom Club PAC opposed.

[64] Is that accurate?

A. Yes.

Q. Did you make the decision to spend $17,250 in opposition to Ms. Cage?

A. Yes.

Q. Did you make that decision knowing it would trigger matching funds for Ms. Cage's campaign?

A. Yes.

Q. Have you ever decided not to make an independent expenditure through either the PAC or Arizonans For a Sound Economy because of your fears that you would trigger matching funds for a candidate you did not support?

A. I don't recall ever making a decision not to spend money. I do recall having it determined when we spend money.

* * *

[76] Q. Did the PAC ever not donate to Arizonans For a Sound Economy because of fears of triggering matching funds?

A. No.

Q. Now, you say you have lived in Arizona all your life with the exception of the year in D.C.; is that correct?

A. Correct.

Q. Are you aware of a scandal that occurred in the State of Arizona called AzScam?

A. I'm aware.

Q. And what's AzScam?

A. I'm aware because I have heard it, but it was a little before my time of paying attention. The best of my recollection, it was a bribery sting where lawmakers were filmed taking cash in exchange for I believe favorable votes or legislation or something.

* * *

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 303
Seattle, WA 98104
P: 206-341-9300/F: 206-341-3911

Attorneys for Plaintiff-Intervenors

FEB 27 2009

SOLICITOR
GENERAL'S
OFFICE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,

Plaintiffs,

and

DEAN MARTIN, a citizen of the State of Arizona, *et al.*,

Plaintiff-Intervenors

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*,

Defendants,

Civil Action No.
08-1550-PHX-ROS

PLAINTIFF-INTERVENORS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST REQUEST FOR ADMISSIONS AND SECOND REQUEST FOR PRODUCTION

(Filed Jun. 12, 2009)

---

[1] Admitted *pro hac vice*.

and	)	(Assigned to the
	)	Honorable
CLEAN ELECTIONS INSTITUTE, INC.	)	Roslyn O. Silver)
	)	
Defendant-Intervenor.	)	

GENERAL OBJECTIONS

1. Plaintiff-Intervenors object to the instructions, definitions, and each of the requests to the extent that they are overly broad as to time and/or scope, vague, ambiguous, and unduly burdensome or purport to impose obligations on Plaintiff-Intervenors that exceed or differ from those imposed by the Federal Rules of Civil Procedure and the applicable rules of this Court.

2. Plaintiff-Intervenors further object to every request to the extent it calls for, or could be construed as calling for, information protected from discovery under the attorney-client privilege, the work product doctrine, the associational privilege protected under the First Amendment, or any other applicable privilege or protection from discovery.

3. Subject to and without waiving the foregoing objections, and subject to the specific objections set forth below, Plaintiff-Intervenors respond as follows:

REQUESTS FOR ADMISSION

1. Admit that Plaintiff Rick Murphy was a participating candidate when he ran for a seat as an Arizona State Representative of District 9 in 2004.

Admit.

2. Admit that Plaintiff Rick Murphy had not run for election to the Arizona State House of Representatives or Arizona State Senate prior to the 2004 election cycle.

Admit.

3. Admit that Plaintiff Rick Murphy received Matching Funds in his 2004 election campaign for a seat as an Arizona State Representative of District 9.

Admit.

4. Admit that Plaintiff Rick Murphy was elected to a seat as an Arizona State Representative of District 9 in 2004.

Admit.

5. Admit that Plaintiff Rick Murphy was an incumbent when he ran for election to a seat as an Arizona State Representative of District 9 in 2006.

Admit.

6. Admit that Plaintiff Rick Murphy chose not to run as a participating candidate in his 2006

election campaign for a seat as an Arizona State Representative of District 9.

Admit.

7. Admit that Plaintiff Rick Murphy was elected to a seat as an Arizona State Representative of District 9 in 2006.

Admit.

8. Admit that Plaintiff Rick Murphy was an incumbent when he ran for election to a seat as an Arizona State Representative of District 9 in 2008.

Admit.

9. Admit that Plaintiff Rick Murphy chose not to run as a participating candidate in his 2008 election campaign for a seat as an Arizona State Representative of District 9.

Admit.

10. Admit that Plaintiff Rick Murphy was elected to a seat as an Arizona State Representative of District 9 in 2008.

Admit.

11. Admit that Plaintiff Bob Burns held office as an Arizona State Representative for District 17 from 1989 until 2000.

Admit.

12. Admit that Plaintiff Bob Burns chose not to run as a participating candidate in his 2002 election campaign for Arizona State Senator of District 9.

Admit.

13. Admit that Plaintiff Bob Burns triggered matching funds for his democratic opponent in the 2002 primary election for Arizona State Senator of District 9.

Deny. Robert Burns did not have a democratic opponent in the 2002 primary election for Arizona State Senator in District 9.

14. Admit that Plaintiff Bob Burns was elected the Arizona State Senator of District 9 in 2002.

Admit.

15. Admit that Plaintiff Bob Burns chose not to run as a participating candidate in his 2004 election campaign for Arizona State Senator of District 9.

Admit.

16. Admit that Plaintiff Bob Burns was an incumbent when he ran for election for the seat as the Arizona State Senator of District 9 in 2004.

Admit.

17. Admit that Plaintiff Bob Burns triggered matching funds for his democratic opponent in the 2004 general election for Arizona State Senator of District 9.

Admit.

18. Admit that Plaintiff Bob Burns was elected the Arizona State Senator of District 9 in 2004.

Admit.

19. Admit that Plaintiff Bob Burns chose not to run as a participating candidate in his 2006 election campaign for Arizona State Senator of District 9.

Admit.

20. Admit that Plaintiff Bob Burns was an incumbent when he ran for election for the seat as the Arizona State Senator of District 9 in 2006.

Admit.

21. Admit that Plaintiff Bob Burns triggered matching funds for his democratic opponent in the 2006 general election for Arizona State Senator of District 9.

Admit.

22. Admit that Plaintiff Bob Burns was elected the Arizona State Senator of District 9 in 2006.

Admit.

23. Admit that Plaintiff Bob Burns chose not to run as a participating candidate in his 2008 election campaign for Arizona State Senator of District 9.

Admit.

24. Admit that Plaintiff Bob Burns was an incumbent when he ran for election for the seat as the Arizona State Senator of District 9 in 2008.

Admit.

25. Admit that Plaintiff Bob Burns triggered matching funds for his democratic opponent in the 2008 general election for Arizona State Senator of District 9.

Admit.

26. Admit that Plaintiff Bob Burns was elected the Arizona State Senator of District 9 in 2008.

Admit.

* * *

U.S. District Court for the District of Arizona

(Title Omitted In Printing)

[LOGO]

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

State Limits on Contributions to Candidates
Updated March 2, 2009

	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Alabama § 17-22A-1 et seq.	Unlimited	Unlimited	Unlimited	$500/candidate/election***	Unlimited
Alaska § 15.13.065 to .080	$500/candidate/year Aggregate amounts candidates may accept from non-residents $20,000/year/gub. candidate $5,000/year/senate candidate $3,000/year/house candidate	$100,000/year/gub. candidate $15,000/year/senate candidate $10,000/year/house candidate	$1,000/office/year Contributions from out-of-state PACs prohibited	Prohibited	Prohibited

Source: National Conference of State Legislatures
Last updated in full March 2009
For more info, contact Jennie Drage Bowser at 303-364-7700

Arizona[a, b] § 16-901 *et seq*	Limits for the 2009-2010 election cycle: $840/statewide candidates $410/legislative candidates An individual may not contribute an aggregate amount in excess of $5,850 per calendar year to candidates and committees that give to candidates. *Amounts are per election cycle*	Limits for the 2009-2010 election cycle: Aggregate contributions accepted from all political parties and organizations cannot exceed: $83,448 – statewide candidates $8,352 – legis. candidates	Limits for the 2009-2010 election cycle: "Super" PACs: $4,176/statewide candidate $1,664/legislative candidate Regular PACs: $840/statewide candidate $410/legislative candidate Aggregate contributions accepted from PACs cannot exceed: $83,448 – statewide candidates $13,464 – legis. candidates *Amounts are per election cycle*	Prohibited[c]	Prohibited[c]
Arkansas § 7-6-201 *et seq*	$2,000/candidate/election.[c]	$2,500/election.[c]	$2,000/candidate/election.[c]	Same as individual limits	Same as individual limits

California[1] Gov. Code § 85300 et seq.	For elections held on or after January 1, 2009: $25,900/gubernatorial cand. $6,500/statewide candidate $3,900/legislative candidate *Amounts are per election*[2]	Unlimited	For elections held on or after January 1, 2009: "Small Contributor" Cmtes[3] $25,900/gubernatorial cand. $12,900/statewide candidate $7,800/legislative candidate Regular PACs: Same as individual limits *Amounts are per election*[2]	Same as individual limits	Same as individual limits

Colorado[b] Constitution Art. XXVIII	Limits effective 2007-2010 $525/gub candidate $525/other statewide cand $200/legis candidate *Amounts per election*[c]	Limits effective 2007-2010 $530,900/gub candidate $106,900/other statewide cand $19,080/senate candidate $13,780/house candidate Note: Political parties are prohibited from contributing to any candidate more than 20% of the voluntary expenditure limits, which are adjusted every 4 years. *Amounts are per applicable election cycle*	Limits effective 2007-2010 "Small Donor" Committees: $5,300/gub & statewide cand $2,125/legis. cand Regular PACs: Same as individual limits	Prohibited[d]	Prohibited[e]

Connecticut[a] § 9-611 et seq	$3,500/gub candidate $1,000/senate candidate $250/house candidate $15,000 aggregate/ individual to all candidates and committees *All amounts are per election*[b]	$50,000/gub candidate $10,000/senate candidate $5,000/house candidate *All amounts are per election*[b]	$5,000/gubernatorial candidate $1,500/state senate candidate $750/state house candidate Aggregate limits on contributions by PACs to candidates: $100,000/election by a PAC established by a business entity $50,000/election by a PAC established by an organization *All amounts are per election*[b]	Prohibited[a] §9-613	Same as individual limits[a]
Delaware § 15-8010 to 8013	$1,200/statewide candidate $600/other candidate *All amounts per election cycle*	$75,000/gub candidate $5,000/senate candidate $3,000/house candidate *All amounts per election cycle*	Same as individual limits	Same as individual limits	Same as individual limits
Florida § 106.08	$500/candidate/ election[c]	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits

Georgia[p] § 21-5-41 to 43	Limits effective as of 2/24/09: Statewide candidates: $6,100/primary election $3,600/primary run-off $6,100/general election $3,600/general run-off Legislative candidates: $2,400/primary election $1,200/primary run-off $2,400/general election $1,20/general run-off	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits

Hawaii § 11-200 to 207	$6,000/statewide candidate $4,000/senate candidate $2,000/house candidate Contributions from a candidate's immediate family are limited to $50,000 in an election cycle, including loans. *All amounts are per election cycle*	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits
Idaho § 67-6610A	$5,000/statewide candidate $1,000/leg candidate *Amounts are per election*[c]	$10,000/statewide candidate $2,000/legislative candidate *Amounts are per election*[d]	Same as individual limits	Same as individual limits	Same as individual limits
Illinois 10 ILCS 5/9-1 et seq.	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

Indiana § 3-9-1-1 et seq.	Unlimited	Unlimited	Unlimited	$5,000 in the aggregate to statewide candidates $2,000 in the aggregate to senate candidates $2,000 in the aggregate to house candidates *All amounts are per year*	Same as corporate limits unless made by the union's PAC, in which case there are no limits
Iowa § 68A.503	Unlimited	Unlimited	Unlimited	Prohibited	Unlimited
Kansas § 25-4153	$2,000/statewide candidate $1,000/senate candidate $500/house candidate *Amounts are per election*[a]	For a contested primary election, same as individual limits. Unlimited in uncontested primaries and general elections	Same as individual limits	Same as individual limits	Same as individual limits

Kentucky § 121.150	$1,000/candidate/ election*	Unlimited* Except for gubernatorial slates, no candidate can accept party contributions which in the aggregate exceed 50% of total contributions or $10,000 (whichever is greater) in an election cycle.	Same as individual limits Aggregate Limits: - Except for gubernatorial slates, no candidate can accept PAC contributions which in the aggregate exceed 50% of total contributions or $10,000 (whichever is greater) in an election cycle. – Gubernatorial slates that accept public financing may not accept more than 25% of their contributions from PACs – Other gubernatorial slates may not accept more than 25% or $150,000 (whichever is less) of contributions from PACs	Prohibited	Same as individual limits

Louisiana § 18:1481 to 1532	$5,000/statewide candidate $2,500/legislative candidate *Both amounts are per election*[a]	Unlimited	Regular PACs: Same as individual limits "Big" PACs[f]: Double the amount of individual limits Candidates subject to following aggregate limits on all PAC contributions accepted for the primary and general elections combined: $80,000/statewide candidate $60,000/legislative candidate	Same as individual limits	Same as individual limits
Maine[b] Tit. 21-A, § 1001 to 1128	$500/gub candidate/election[a] $250/other candidate/election[a] Individuals limited to $25,000 aggregate contributions to all campaign finance entities per calendar year.	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits

Maryland Election Law § 13-226	$4,000/candidate $10,000 aggregate to all candidates *Both amounts are per 4 year election cycle (1/1/07-12/31/10)*	Transfer limit: $6,000/4-year election cycle In-Kind Contributions Limited to an amount equal to $1 for every two registered voters in the state, regardless of political affiliation. Limit is per 4-year election cycle.	$6,000/candidate/4-year election cycle	Same as individual limits	Same as individual limits
Massachusetts Ch. 55, § 6, 6A, 7A and 8	$500/candidate $12,500/individual aggregate limit on contributions to all candidates Registered lobbyists may only contribute up to $200/candidate *All amounts are per calendar year*	$3,000/candidate/year No limit on in-kind contributions	Regular PAC: $500/candidate People's Committee: $500/candidate Candidates cannot accept aggregate PAC contributions that exceed the following amounts: $150,000/gub candidate $18,750/senate candidate $7,500/house candidate *All amounts per calendar year*	Prohibited	Same as PAC limits

Michigan § 169.252	$3,400/statewide candidate $1,000/senate candidate $500/house candidate *All amounts are per election cycle*	$68,000/statewide candidate $10,000/senate candidate $5,000/house candidate *All amounts are per election cycle*	Political Committees: Same as individual limits Independent Committees[1]: $34,000/statewide candidate $10,000/senate candidate $5,000/house candidate *All amounts are per election cycle*	Prohibited[2]	Prohibited[2]

Minnesota § 10A.27	Election year limits: $2,000/gub. candidate $500/legislative candidate Non-election year limits: $500/gub. candidate $100/legislative candidate Aggregate contributions from PACs, lobbyists, political funds and individuals who contribute or loan more than ½ the yearly contribution limit cannot exceed 20% of spending limits. For 2007, these amounts are: $9,500/gub. candidate $2,400/senate candidate $1,200/house candidate *All amounts are per calendar year.*	Party committees may contribute up to 10 times the limits imposed on individuals	Same as individual limits	Prohibited	Same as individual limits
Mississippi § 23-15-801 et seq. § 79-13-15	Unlimited	Unlimited	Unlimited	$1,000/candidate/ calendar year	Unlimited

Missouri § 130.031	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Montana[a] § 13-37-216	$650/gubernatorial $310/other statewide candidate $160/legislative candidate Limits will be adjusted in 1/10 *Amounts are per election*[a]	$22,500/gubernatorial slate $8,150/other statewide cand $1,300/senate candidate $900/house candidate Limits will be adjusted in 1/10 *Amounts are per election*[a]	Same as individual limits Candidates limited to total contributions from all PACs: $2,450 senate candidates $1,500 house candidates Limits will be adjusted in 1/10 *Amounts are per election*[a]	Prohibited[a]	Same as individual limits

Nebraska[a] § 32-1608	Unlimited	Candidates limited to maximum amount of aggregate contributions that can be accepted in an election period from PACs, corporations, labor unions, associations, other candidate committees, political parties, and other organizations. Once the limit is reached, candidates may accept only individual contributions. Limit for 2010: $46,000/legislative candidate (No statewide races in 2010)	Same as party contribution limits	Candidates may not accept funds totaling more than 40% of the voluntary spending limit for their office	Same as party contribution limits
Nevada §294A.100 and Const. Art. 2 §10	$5,000/candidate/election[a]	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits
New Hampshire § 664:4	To candidates not agreeing to abide by spending limits: $1,000/election[a] To candidates agreeing to abide by spending limits: $5,000/election[a]	To candidates not agreeing to abide by spending limits: $1,000/election[a] Unlimited to candidates who agree to expenditure limits	Same as party limits	Same as individual limits[a]	Prohibited

New Jersey[a] § 19:44A-11.3	$3,400/gubernatorial candidate $3,000/legislative candidate Both amounts are per election.[b]	No limit on contributions by state & county committees. National party committee: $9,300/election.[b]	$9,300/candidate/election.[b]	Same as individual limits.	Same as individual limits.
New Mexico § 1-19-25 to 36	Unlimited.	Unlimited.	Unlimited.	Unlimited.	Unlimited.

New York[1] Election Law, § 14-114	For 2008: Gubernatorial Candidates Primary – Product of number of enrolled voters in candidate's party in state x $.005, but not less than $6,000 or more than $18,100 General – $37,800 Legislative Candidates Primary – $6,000/senate candidate $3,800/house candidate General – $9,500/senate candidate $3,800/house candidate Maximum contributions by individual cannot exceed $150,000 in the aggregate	Prohibited in primary election Unlimited in general election	Same as individual limits	Corporations are limited to $5,000 per year in aggregate contributions to NY state candidates and committees	Same as individual limits

	Separate limits apply for contributions from all family members in the aggregate. Generally, this limit is based on the formula of total number of enrolled voters in the candidate's party in the state x $0.025. For legislative candidates, this amount may not exceed $100,000. "Family" is defined as a child, parent, grandparent, brother, sister, and the spouses of those persons. *All amounts per calendar year*				
North Carolina § 163-278.6 et seq.	$4,000/candidate/election*	Unlimited	Same as individual limits	*Prohibited**	*Prohibited**
North Dakota § 16.1-08.1	Unlimited	Unlimited	Unlimited	*Prohibited**	*Prohibited**

Ohio[a] § 3517.102(B)(1)(a) and 3599.03	Limits effective 2/25/09 $11,395.56/candidate/election[a]	$642,709.58/statewide cand $128,200.05/senate candidate $63,815.14/house candidate In-kind contributions unlimited *All amounts are per election*[a]	Same as individual limits	Prohibited[a]	Prohibited[a]
Oklahoma 21 OS § 187.1 et seq. and Ethics Commission Rules §257:1-1-1 et seq. and §257:10-1-2 et seq	$5,000/candidate/campaign [a]This limit applies to an entire family, defined as an individual, his spouse, and all children under 18 living in the same household	$50,000/gubernatorial cand[a] $25,000/other statewide cand[a] $1,000/legislative candidate *All amounts per calendar year*	Same as individual limits	Prohibited[a]	Prohibited[a]
Oregon § 260.160 to 174	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Pennsylvania 25 Pa. Stat § 3241 to 3260a	Unlimited	Unlimited	Unlimited	Prohibited[a]	Prohibited[a]

Rhode Island § 17-25-10.1	$1,000/candidate or $2,000/candidate if candidate qualifies for public funding and agrees to abide by spending limits *Both amounts are per calendar year.* Individuals limited to $10,000 in aggregate contributions to candidates, PACs and party committees per year	$25,000/candidate/year In-kind contributions unlimited	$1,000/candidate/calendar year or $2,000/candidate/year if candidate qualifies for public funding and agrees to abide by spending limits Annual aggregate limit of $25,000 to all recipients	Prohibited	Prohibited
South Carolina § 8-13-1314 to 1316	$3,500/statewide candidate $1,000/legislative candidate Both amounts are per election*	Candidates may not accept more than the following from parties during an election cycle: $50,000/statewide candidate $5,000/other candidate	Same as individual limits	Same as individual limits	Same as individual limits
South Dakota § 12-27-7	$4,000/statewide candidate $1,000/legislative candidate *Both amounts are per calendar year*	Unlimited	Unlimited	Prohibited	Prohibited*

Tennessee § 2-10-302	$2,500/statewide candidate $1,000/legislative candidate *Both amounts are per election*[e]	Candidates limited to aggregate amount from all political party committees: $250,000/statewide candidate $40,000/senate candidate $20,000/house candidate *All amounts are per election*[e]	$7,500/statewide candidate $7,500/senate candidate $5,000/other candidates No more than 50% of a statewide candidate's or $75,000 of a legislative candidate's total contributions may come from PACs *All amounts are per election*[e]	Prohibited	Same as individual limits
Texas Election Code, § 253	Unlimited	Unlimited	Unlimited	Prohibited[f]	Prohibited[f]
Utah § 20A-11-101	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Vermont[i] 17 VSA §2805	$1,000/candidate/election[e][j] Contributions from immediate family members are unlimited.	Unlimited	$3,000/candidate/election[e]	Same as individual limits	Same as individual limits
Virginia § 24.2-900 et seq.	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

Washington[c] RCW § 42.17.610 et seq. WAC § 390-05-400	Adjusted limits effective 12/28/08: $1,600/gub candidate $800/legislative candidate Both amounts are per election* During the 21 days before the general election, no contributor may donate more than $50,000 in the aggregate to a statewide candidate or $5,000 in the aggregate to any other candidate. This includes a candidate's personal contributions to his/her campaign.	Aggregate contributions from a state party central committee to a statewide or legislative candidate may not exceed $.80 x number of registered voters in candidate's district. This limit applies to the entire election cycle.	Same as individual limits A PAC that has not received contributions of $10 or more from 10 or more WA registered voters during the past 180 days is prohibited from making contributions.	Prohibited for corporations not doing business in Washington state. Same as individual limits for Washington corporations.	Prohibited for unions that have fewer than 10 members who reside in Washington. Same as individual limits for Washington unions.
West Virginia § 3-8-8 to 12	$1,000/candidate/election*	Same as individual limits	Same as individual limits	Prohibited[d]	Same as individual limits

Wisconsin § 11.01 et seq.	$10,000/statewide candidate $1,000/senate candidate $500/house candidate *Above amounts are per election campaign* An individual may not contribute more than $10,000 in a calendar year to any combination of Wisconsin candidates or political committees.	Aggregate limit on amount candidates may accept from all committees, including party committees, in an election campaign: $700,830/gub. candidate $22,425/senate candidate $11,213/house candidate	$43,128/gub candidate $1,000/senate candidate $500/house candidate Aggregate limit on amount candidates may accept from all committees, excluding party committees, in an election campaign: $485,190/gub. candidate $15,525/senate candidate $7,763/house candidate *All amounts are per election cycle*	Prohibited	Prohibited
Wyoming § 22-25-102	$1,000/candidate/election* No individual may make more than $25,000 in total contributions during a two-year election cycle.	Unlimited	Unlimited	Prohibited	Prohibited

(a) Primary and general are considered separate elections; stated amount may be contributed in each election.
(b) Candidates participating in "Clean Elections" public financing may not accept contributions after qualifying for public funds. Limits listed are for candidates not participating in public financing program.
(c) In Arizona, a PAC that has received contributions from 500 or more individuals in amounts of $10 or more in a one-year period may qualify as a "Super PAC." Qualification is valid for two years. (Ariz. Rev. Stat. §16-905(I))

(d) Direct corporate and/or union contributions are prohibited and/or use of treasury funds and/or dues is prohibited. In these states, the law specifically says that nothing prevents the employees or officers of a corporation from making political contributions through a PAC, using funds from an account that is separate and segregated from corporate accounts. Such contributions are subject to the same limitations placed on other PACs.

(e) Full public financing is available to qualifying candidates for governor and lieutenant governor. A candidate who wishes to receive public funding may not solicit or accept any private contributions except qualifying contributions.

(f) In Louisiana, a "Big PAC" is a PAC with over 250 members who contributed over $50 to the PAC during the preceding calendar year and has been certified as meeting that membership requirement.

(g) In California, a "small contributor committee" is a committee which has been in existence for at least six months, receives contributions from 100 or more persons in amounts of not more than $200 per person, and makes contributions to five or more candidates. (Cal. Govt. Code §85203)

(h) In Michigan, an "independent committee" must have filed a statement of organization at least 6 months before the election in which the committee wishes to make contributions; must have supported or opposed 3 or more candidates for nomination or election; and must have received contributions from at least 25 persons.

(i) In Colorado, a "small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than $50 in the aggregate per year.

(j) Any public utility regulated by the Public Service Commission is prohibited from making political contributions (Ala. Code §10-2A-70.1)

(k) The text of the statute on contribution limits (KRS §121A.050(1)) states that party contributions to candidates are limited to $1,000 per election. However, the Kentucky Registry of Election Finance's web site states that party contributions to candidates are unlimited (http://www.state.ky.us/agencies/kref/contlmt.htm, see footnote 4).

(l) Vermont's attempt to limit out-of-state contributions to 25% of a candidate's total contributions received was declared unconstitutional on August 18, 2004, by the U.S. 2nd Circuit Court of Appeals (Landell v. Sorrell, 382 F.3d 91 (2004))

(m) While these limits are specified in Oklahoma's Ethics Rules, statutes have not been changed to reflect this limit. According to the statutes, any contribution in excess of $5,000 would constitute a criminal violation.

(n) Corporations are no longer prohibited from making political contributions under New Hampshire law despite the language of NH RSA 664:4. That ban was declared unconstitutional by a federal district court in 1999. A June 6, 2000 letter from Deputy Attorney General Steven M. Houran indicates that the limits on individual contributions now apply to corporate contributions as well.

(o) In Massachusetts, a "People's Committee" is a PAC that has been in existence for six months, has received contributions from individuals of $140 (adjusted biennially; this amount is for 2006-2007) or less per year, and has contributed to five candidates. It is unclear what advantage there would be to converting to a People's Committee, since the contribution limits are the same.

(p) Contribution limits are adjusted for inflation at the beginning of each campaign cycle.

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

[Title Omitted In Printing]

Participating Primary Winner Candidates for the 2008 General Election

Total Number of Participating Candidates = 107

Office Sought Candidate Name	Committee	Party	Part?	General Initial Disbursement	Candidate Equalizing Disbursement	Independent Exp. Disbursement	Total Disbursement
CORPORATION COMMISSIONER							
KENNEDY, SANDRA	20081009 2	Democratic	X	$124,020.00	$117,716.09	$9,301.30	$251,037.39
MC CLURE, MARIAN	20089357 5	Republican	X	$124,020.00	$117,716.09	$0.00	$241,736.09
NEWMAN, PAUL	20081013 1	Democratic	X	$124,020.00	$117,716.09	$9,301.30	$251,037.39
STUMP, BOB	20089357 6	Republican	X	$124,020.00	$117,716.09	$0.00	$241,736.09
WONG, BARRY	20081003 3	Republican	X	$124,020.00	$117,716.09	$0.00	$241,736.09
		Office Totals:		**$620,100.00**	**$588,580.45**	**$18,602.60**	**$1,227,283.05**
STATE SENATOR – DISTRICT NO. 2							
JENKINS, ROYCE	20089358 5	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$19,382.00**	**$0.00**	**$0.00**	**$19,382.00**
STATE SENATOR – DISTRICT NO. 3							
LANDAHL, MARY	20081008 6	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$19,382.00**	**$0.00**	**$0.00**	**$19,382.00**
STATE SENATOR – DISTRICT NO. 4							
BOEHLKE, ROBERT	20089362 8	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
HARPER, JACK	20089354 8	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$32,303.00**	**$0.00**	**$0.00**	**$32,303.00**

STATE SENATOR – DISTRICT NO. 5							
JEFFERS, BILL	2008102038	Democratic	X	$19,382.00	$0.00	$17,900.74	$37,282.74
		Office Totals:		**$19,382.00**	**$0.00**	**$17,900.74**	**$37,282.74**
STATE SENATOR – DISTRICT NO. 6							
LARSON, JIM	2008093633	Democratic	X	$19,382.00	$13,526.45	$0.00	$32,908.45
		Office Totals:		**$19,382.00**	**$13,526.45**	**$0.00**	**$32,908.45**
STATE SENATOR – DISTRICT NO. 7							
BLACK, LISA	2008093635	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$19,382.00**	**$38,764.00**	**$0.00**	**$58,146.00**
STATE SENATOR – DISTRICT NO. 9							
PRICE, KAREN	2008093612	Democratic	X	$19,382.00	$17,707.44	$10,543.98	$47,633.42
		Office Totals:		**$19,382.00**	**$17,707.44**	**$10,543.98**	**$47,633.42**
STATE SENATOR – DISTRICT NO. 10							
GRAY, LINDA	2008093587	Republican	X	$19,382.00	$0.00	$21,640.36	$41,022.36
MONROE, MARTIN JAMES	2008093582	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$38,764.00**	**$0.00**	**$21,640.36**	**$60,404.36**
STATE SENATOR – DISTRICT NO. 11							
WALLACK, ANN	2008109073	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$19,382.00**	**$38,764.00**	**$0.00**	**$58,146.00**
STATE SENATOR – DISTRICT NO. 12							
COTERA, ANGELA	2008093659	Democratic	X	$19,382.00	$13,186.12	$6,147.56	$38,715.68
		Office Totals:		**$19,382.00**	**$13,186.12**	**$6,147.56**	**$38,715.68**
STATE SENATOR – DISTRICT NO. 16							
LANDRUM, LEAH	2008093697	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
VERES, DANIEL	2008109026	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$32,303.00**	**$0.00**	**$0.00**	**$32,303.00**

STATE SENATOR – DISTRICT NO. 17							
BURTON-CAHILL, MEG	2008100119	Democratic	X	$19,382.00	$0.00	$438.66	$19,820.66
HERNANDEZ, JESSE	2008100144	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$38,764.00**	**$0.00**	**$438.66**	**$39,202.66**
STATE SENATOR – DISTRICT NO. 18							
NATIVIO, JUDAH	2008930609	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
PEARCE, RUSSELL	2004930029	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$32,303.00**	**$0.00**	**$0.00**	**$32,303.00**
STATE SENATOR – DISTRICT NO. 20							
HUPPENTHAL, JOHN	2008930589	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
MAISH, TED	2008930631	Democratic	X	$19,382.00	$0.00	$12,119.16	$31,501.16
		Office Totals:		**$38,764.00**	**$0.00**	**$50,883.16**	**$89,647.16**
STATE SENATOR – DISTRICT NO. 23							
CAMPOS, ANDRE	2008100173	Republican	X	$19,382.00	$0.00	$3,538.04	$22,920.04
RIOS, REBECCA	2008100057	Democratic	X	$19,382.00	$0.00	$3,441.18	$22,823.18
		Office Totals:		**$38,764.00**	**$0.00**	**$6,979.22**	**$45,743.22**
STATE SENATOR – DISTRICT NO. 24							
AGUIRRE, AMANDA	2008930650	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$19,382.00**	**$0.00**	**$0.00**	**$19,382.00**
STATE SENATOR – DISTRICT NO. 25							
ALVAREZ, MANNY	2008930594	Democratic	X	$19,382.00	$0.00	$1,894.10	$21,276.10
BLACK, MARY ANN	2008930658	Republican	X	$19,382.00	$0.00	$5,660.76	$25,042.76
		Office Totals:		**$38,764.00**	**$0.00**	**$7,554.86**	**$46,318.86**

STATE SENATOR – DISTRICT NO. 26							
CAGE, CHERYL A	200810150	Democratic	X	$19,382.00	$0.00	$38,764.00	$58,146.00
MELVIN, AL	200893569	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
		Office Totals:		**$38,764.00**	**$0.00**	**$77,528.00**	**$116,292.00**
STATE SENATOR – DISTRICT NO. 27							
GARCIA, JORGE LUIS	200810038	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
WESTERMAN, ROBERT	200810008	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$38,764.00**	**$0.00**	**$0.00**	**$38,764.00**
STATE SENATOR – DISTRICT NO. 30							
VALLE, GEORGETTE	200810024	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$19,382.00**	**$38,764.00**	**$0.00**	**$58,146.00**
STATE REPRESENTATIVE – DISTRICT 1							
GRITTNER, DENNIS JOEL	200810232	Democratic	X	$19,382.00	$399.75	$0.00	$19,781.75
		Office Totals:		**$19,382.00**	**$399.75**	**$0.00**	**$19,781.75**
STATE REPRESENTATIVE – DISTRICT 2							
CHABIN, TOM	200810071	Democratic	X	$1,215.00	$0.00	$0.00	$1,215.00
DESCHENE, CHRISTOPHER	200810172	Democratic	X	$1,245.00	$0.00	$0.00	$1,245.00
		Office Totals:		**$2,460.00**	**$0.00**	**$0.00**	**$2,460.00**
STATE REPRESENTATIVE – DISTRICT 3							
DURBIN, PAMELA LYNN	200810068	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
GOODALE, DORIS	200893619	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$32,303.00**	**$0.00**	**$0.00**	**$32,303.00**
STATE REPRESENTATIVE – DISTRICT 4							
BOONE, TOM	200893623	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
BURGES, JUDY	200893563	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00

DOLPHIN, SUE	200893604	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
FORSTER, PAULA	200893644	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$77,528.00**	**$0.00**	**$0.00**	**$77,528.00**
STATE REPRESENTATIVE - DISTRICT 5							
BROWN, JACK	200893580	Democratic	X	$19,382.00	$32,535.56	$6,228.44	$58,146.00
		Office Totals:		**$19,382.00**	**$32,535.56**	**$6,228.44**	**$58,146.00**
STATE REPRESENTATIVE - DISTRICT 6							
CONRAD, TERI	200810039	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
DOODY, JACK	200893601	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
SEEL, CARL	200810146	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$51,685.00**	**$0.00**	**$0.00**	**$51,685.00**
STATE REPRESENTATIVE - DISTRICT 7							
LUNN, JEANNE	200893648	Democratic	X	$19,382.00	$4,724.29	$0.00	$24,106.29
		Office Totals:		**$19,382.00**	**$4,724.29**	**$0.00**	**$24,106.29**
STATE REPRESENTATIVE - DISTRICT 8							
KAVANAGH, JOHN	200810012	Republican	X	$19,382.00	$38,764.00	$0.00	$58,146.00
RIMMER, STEPHANIE	200810097	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$38,764.00**	**$77,528.00**	**$0.00**	**$116,292.00**
STATE REPRESENTATIVE - DISTRICT 9							
HUTCHINSON, SHAWN	200810003	Democratic	X	$19,382.00	$0.00	$6,818.76	$26,200.76
LESKO, DEBBIE	200893630	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
VAN HORSEN, SHERI	200893598	Democratic	X	$19,382.00	$0.00	$38,764.00	$58,146.00
		Office Totals:		**$58,146.00**	**$0.00**	**$84,346.76**	**$142,492.76**
STATE REPRESENTATIVE - DISTRICT 10							
DALE, MARGARITE	200810181	Green	X	$19,382.00	$38,764.00	$0.00	$58,146.00
LOVEJOY, LAMONT	200893642	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00

QUELLAND, DOUG	200893566	Republican	X	$19,382.00	$38,764.00	$0.00	$58,146.00
THRASHER, JACKIE	200893625	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$77,528.00**	**$155,056.00**	**$0.00**	**$232,584.00**
STATE REPRESENTATIVE - DISTRICT 11							
ALTMANN, JON	200893647	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
DRIGGS, ADAM	200893626	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
MEYER, ERIC	200810211	Democratic	X	$19,382.00	$0.00	$18,786.16	$38,168.16
		Office Totals:		**$58,146.00**	**$0.00**	**$96,314.16**	**$154,460.16**
STATE REPRESENTATIVE - DISTRICT 12							
CASTORENA, CELESTE M	200810165	Green	X	$19,382.00	$0.00	$38,764.00	$58,146.00
MONTENEGRO, STEVE	200893584	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
NUNEZ, EVE	200810002	Democratic	X	$19,382.00	$1,457.09	$2,834.82	$23,673.91
SCANLON, DAVID	200893655	Democratic	X	$19,382.00	$1,457.09	$7,085.47	$27,924.56
		Office Totals:		**$77,528.00**	**$2,914.18**	**$87,448.29**	**$167,890.47**
STATE REPRESENTATIVE - DISTRICT 13							
SCHWAKTZ, TIMOTHY PAUL	200810187	Republican	X	$19,382.00	$21,622.70	$0.00	$41,004.70
		Office Totals:		**$19,382.00**	**$21,622.70**	**$0.00**	**$41,004.70**
STATE REPRESENTATIVE - DISTRICT 15							
HEDGES, ED	200810154	Republican	X	$19,382.00	$0.00	$0.00	$19,382.00
LUJAN, DAVID	200893571	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
SINEMA, KYRSTEN	200893610	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$58,146.00**	**$0.00**	**$0.00**	**$58,146.00**
STATE REPRESENTATIVE - DISTRICT 16							
MIRANDA, BEN	200810191	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$12,921.00**	**$0.00**	**$0.00**	**$12,921.00**

STATE REPRESENTATIVE - DISTRICT 17							
ABLESER, ED	200893656	Democratic	X	$19,382.00	$0.00	$9,214.73	$28,596.73
SCHAPIRA, DAVID	200893634	Democratic	X	$19,382.00	$0.00	$9,747.48	$29,129.48
THOMPSON, MARK	200810085	Republican	X	$19,382.00	$0.00	$2,068.00	$21,450.00
WADDLE, WESLEY	200810081	Republican	X	$19,382.00	$0.00	$8,368.82	$27,750.82
		Office Totals:		**$77,528.00**	**$0.00**	**$29,399.03**	**$106,927.03**
STATE REPRESENTATIVE - DISTRICT 18							
ASH, CECIL	200810064	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
COURT, STEVE	200810090	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
PURSLEY, TAMMIE	200893649	Democratic	X	$19,382.00	$0.00	$3,205.40	$22,587.40
		Office Totals:		**$45,224.00**	**$0.00**	**$3,205.40**	**$48,429.40**
STATE REPRESENTATIVE - DISTRICT 19							
CRANDALL, RICH	200893636	Republican	X	$19,382.00	$38,764.00	$0.00	$58,146.00
ROMANO, KATHY	200810102	Democratic	X	$19,382.00	$38,764.00	$0.00	$58,146.00
		Office Totals:		**$38,764.00**	**$77,528.00**	**$0.00**	**$116,292.00**
STATE REPRESENTATIVE - DISTRICT 20							
DIAL, JEFF	200893565	Republican	X	$12,921.00	$0.00	$25,842.00	$38,763.00
WATERS, RAE	200810140	Democratic	X	$19,382.00	$0.00	$25,873.80	$45,255.80
		Office Totals:		**$32,303.00**	**$0.00**	**$51,715.80**	**$84,018.80**
STATE REPRESENTATIVE - DISTRICT 21							
HETTMANSPERGER, PHIL	200893620	Democratic	X	$19,382.00	$0.00	$8,515.82	$27,897.82
NICHOLS, WARDE	200893600	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
YARBROUGH, STEVE	200893595	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
		Office Totals:		**$58,146.00**	**$0.00**	**$86,043.82**	**$144,189.82**

STATE REPRESENTATIVE – DISTRICT 22							
HENDRIX, LAURIN	200810163	Republican	X	$12,921.00	$0.00	$0.00	$12,921.00
RAY, GLENN	200810061	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$32,303.00**	**$0.00**	**$0.00**	**$32,303.00**
STATE REPRESENTATIVE – DISTRICT 23							
BUSTAMANTE, ERNEST	200810083	Democratic	X	$19,382.00	$0.00	$12,926.87	$32,308.87
FILLMORE, JOHN	200893570	Republican	X	$19,382.00	$0.00	$33,455.13	$52,837.13
MC GUIRE BARBARA	200810025	Democratic	X	$19,382.00	$0.00	$12,816.89	$32,198.89
PRATT, FRANK	200893661	Republican	X	$19,382.00	$0.00	$24,079.39	$43,461.39
		Office Totals:		**$77,528.00**	**$0.00**	**$83,278.28**	**$160,806.28**
STATE REPRESENTATIVE – DISTRICT 24							
JONES, RUSS	200810098	Republican	X	$19,382.00	$0.00	$37,851.68	$57,233.68
PANCRAZI, LYNNE	200810023	Democratic	X	$19,382.00	$0.00	$25,102.36	$44,484.36
ULMER, THERESA	200810022	Democratic	X	$19,382.00	$0.00	$6,056.60	$25,438.60
		Office Totals:		**$58,146.00**	**$0.00**	**$69,010.64**	**$127,156.64**
STATE REPRESENTATIVE – DISTRICT 25							
BOYER, RICHARD	200893663	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
FLEMING, PATRICIA	200893651	Democratic	X	$19,382.00	$0.00	$0.00	$19,382.00
STEVENS, DAVID	200893608	Republican	X	$19,382.00	$0.00	$38,764.00	$58,146.00
		Office Totals:		**$51,685.00**	**$0.00**	**$38,764.00**	**$90,449.00**
STATE REPRESENTATIVE – DISTRICT 26							
JORGENSEN, DONALD	200893639	Democratic	X	$19,382.00	$7,035.67	$25,904.81	$51,422.48
WRIGHT, NANCY YOUNG	200810030	Democratic	X	$19,382.00	$7,035.67	$31,728.33	$58,146.00
ZERULL, MARILYN	200893569	Republican	X	$19,382.00	$164.70	$38,599.30	$58,146.00
		Office Totals:		**$58,146.00**	**$14,236.04**	**$95,332.44**	**$167,714.48**

STATE REPRESENTATIVE – DISTRICT 27							
CAJERO BEDFORD, OLIVIA	200893579	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
LOPES, PHIL	200893586	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
SOLBERG, KENT	200810182	Green	X	$19,382.00	$0.00	$0.00	$19,382.00
		Office Totals:		**$45,224.00**	**$0.00**	**$0.00**	**$45,224.00**
STATE REPRESENTATIVE – DISTRICT 28							
FARLEY, STEVE	200893599	Democratic	X	$0.00	$0.00	$0.00	$0.00
		Office Totals:		**$0.00**	**$0.00**	**$0.00**	**$0.00**
STATE REPRESENTATIVE – DISTRICT 29							
HEINZ, MATT	200893643	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
PATTERSON, DANIEL	200893618	Democratic	X	$12,921.00	$0.00	$0.00	$12,921.00
		Office Totals:		**$25,842.00**	**$0.00**	**$0.00**	**$25,842.00**
STATE REPRESENTATIVE – DISTRICT 30							
DALESSANDRO, ANDREA	200893662	Democratic	X	$19,382.00	$1,145.54	$14,837.33	$35,364.87
GOWAN, DAVID	200893574	Republican	X	$12,921.00	$4,012.54	$21,829.46	$38,763.00
		Office Totals:		**$32,303.00**	**$5,158.08**	**$36,666.79**	**$74,127.87**
		Total:		**$2,438,002.00**	**$1,140,995.06**	**$985,972.99**	**$4,564,970.05**

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, et al.,

Plaintiffs,

and

DEAN MARTIN, a citizen of the State of Arizona, et al.,

Plaintiff-Intervenors.

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; et al.,

Defendants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

No. 08-1550-PHX-ROS

TELEPHONIC DEPOSITION OF
LOUIS J. HOFFMAN

Phoenix, Arizona
March 6, 2009
10:05 a.m.

(Filed Jun. 12, 2009)
(Filed Jun. 12, 2009)

REPORTED BY:
Debra Riggs Torres, RPR
Certified Reporter
Certificate No. 50647

PREPARED FOR:
The Court
(Original)

* * *

[19] Q. BY MR. MAURER: And in your mind, the Mecham impeachment was one of the events that motivated the Clean Elections Act?

A. There were a number of practices that motivated the Clean Election – a number of events and occurrences that motivated the Clean Elections Act or caused people to get worked up about it, that led to the Clean Elections Act, and those included AzScam and the Mecham situation and a number of procedures that were common in fundraising at the time.

Q. Could you tell me what those procedures are?

A. There was a number of – there was a lot of influence – influence-buying by people giving campaign contributions. There was bundling of contributions that was done-within various organizations, where people were – would collect groups of people to – that they [20] were involved with, to try to get significant size money provided to particular candidates, and some of that was legal and some of it was arguably legal and some of it was illegal.

But that was – that kind of procedure and the general concern about people, in effect, buying elections or buying access to politicians was something that was of great concern in – in motivating the Clean Elections Act.

* * *

[38] Q. BY MR. MAURER: And you referred to the purposes of the matching funds provision. Can you tell me what those or that, if it's one or more, and what they are?

[39] MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: Sure. I can tell you what I – what I believe those purposes are, and there were – you're quite right – many.

We wanted to provide – when I refer to "we," I'm talking about myself and various other people who were involved in crafting the language of and the spirit of the Clean Elections Act.

MR. DAVIS-DENNY: Louis, I just want to interrupt real quick. I would instruct the witness to the extent that your – please don't disclose communications with members of the Clean Elections Institute or with ACE that were given in the context of providing legal advice.

But with that caveat, please go ahead and answer.

MR. MAURER: Okay.

THE WITNESS: Okay. So we had a number of problems with respect to – in crafting the Act, and one of the problems was that there was a wide disparity in the number of – in the amount of money that was spent on various races.

There are 30 legislative districts in particular in Arizona, and approximately 25 of them are – at the

time of the Act, were either uncontested – probably about 20 of them were uncontested entirely, and [40] another five were contested, but not very likely to switch party or switch candidate. In other words, there was not strong chances of a minority party taking over the seat or the seats in those districts.

There were maybe five competitive districts in Arizona out of 30 at the time, and – you know, five or six. These are approximate figures. In the noncompetitive or non – you know, in the districts in which – the majority of districts in which there was very little or unlimited competition, there was also relatively small amounts of money spent. On the other hand, there was relatively high amounts of money spent in the competitive districts.

So just to put some numbers on it, we did some research and found out that in the years preceding the drafting and passage of the Clean Elections Act, approximately $10,000 or less was the amount that was spent per candidate in something like 80 percent of the races. On the other hand, in the competitive districts, candidates would spend $30,000 or so, on average, and – 20- or $30,000, or something like that, and there was one or two races in which there had been like $80,000 spent by a candidate.

So we felt that we wanted to not have a situation in which people could – one candidate could buy [41] elections by having lots more money and spending lots more money than an opposing candidate. And if we kept the dollar amount given to the Clean

Elections Act candidates at a, say, 10,000-dollar amount, then we could have a situation where it would be too easy to outspend the Clean Elections candidate and no one would run as a Clean Elections candidate.

On the other hand, if we set the Clean Elections allocation at $30,000, so as to cover the bulk of the competitive races as well, where you wanted to have – people have the opportunity to run as a Clean Elections candidate, then we would have an enormous waste of government money because those – that same amount would be given to a lot of candidates in noncompetitive districts who really wouldn't be – have any – historically weren't spending that amount anyway, so there would be millions of dollars of wasted Arizona money. And, in addition, we would encourage, excessively encourage candidates to run as Clean Elections Act candidates, because, you know, they would be getting such a large amount of money that they would be unduly pressured into becoming – unduly in our view – pressured into becoming a Clean Elections candidate.

And so as a result, one of the purposes of the matching funds provision was to set – be able to [42] allow us to set the bar at the low amounts that would be needed for the bulk of campaigning, and yet allow it to flow upwards in which there was a competitive race in which the candidate was opposing a well-funded opponent.

On the other hand, we didn't want to allow that to continue indefinitely, because, again, out of concern about the public cost, so we didn't want to make it – matching funds go up, you know, no matter how much was spent by the other side, we thought at some point there was – you would have enough money to get out your message. And if the nonparticipating candidate outspent you, so be it. And that's why we allowed matching funds going from one times to three times the initial allocation. So that's one reason why the matching funds provision was written the way it was in the Act.

Another reason was to allow candidates to participate in the Act without – as I said earlier – without fear that they would – could easily be outspent and not have enough money to respond to messages provided by the other opposing candidates.

Our view was that the more speech and more ability for people to get out their message, the better, especially in cases where there was strong competition and strong fights over particular – can you guys turn off the speakerphone, it's really distracting me – where there [43] was fights over the key races that were going to make the difference, and we wanted to allow candidates to – have a greater variety of candidates and a greater number of candidates to make races more competitive, and to have more citizens participate in the political process through running for office, and allowing matching funds achieved that purpose, to provide a – a greater variety of candidates and a greater number of candidates as well.

The matching funds also facilitated the overall purpose of the Act in letting candidates not be allowed to – not have to spend enormous time raising funds. One of the alternatives that we discussed was that if a candidates was outspent, they could be – they would be released to do fundraising. So if a participating candidate was outspent by a nonparticipating candidate, that instead of the state providing them matching funds, they could go out and raise their own money, but that would defeat the – or play against the purpose of the Act, to make Clean Elections Act candidates not have to raise funds and not waste their time speaking to people about money, as opposed to speaking to voters about issues of interest, and it would also discourage candidates from running who are not fundraising-oriented and not interested in running because of the issue of fundraising, which is something that a number of candidates have said.

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[111] Q. BY MR. MAURER: Are there any narrow special interests that you can identify in Arizona in 2009?

MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: Well, sure. I mentioned, you know, a couple of categories of narrow special interests [112] just a few minutes ago in giving you examples. Those are interests that are – that are there in any given – you know, over time.

Q. BY MR. MAURER: But who are they? You mentioned categories. I want to know – I'd like to know some names.

MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: I – I honestly don't know who the players are in, you know, the current – you know, the big issue in Arizona right now is the budget debates and whether taxes are going to be raised and, you know, who is going to be exempt from that, and I'm not sure who's playing in that field right now, quite honestly.

In other areas, you know, I'm not sure what the legislature is looking at, because they're still early in their session, so – I guess I can't answer it for 2009.

Q. BY MR. MAURER: Okay. How about when you were drafting the Act, were you – did you – were you aware of any specific narrow special interests when you were drafting the Act?

A. Yeah. There was – there were issues that had come up involving developers, whether they were going to be permitted to expand development in – outside of cities and on what conditions. There were issues of – revolving [113] around transportation, as to whether there was going to be – the freeways and where they would run, light rail, whether there was – there was the issue involving Indian gaming and gaming in general, which, you know, I mentioned was played out in the AzScam thing was still relevant in the time we were drafting the Act.

There was – I don't know. Those are what comes to mind. I'm sure there were many other issues involving tax breaks for individual businesses or corporations. There was issues involving trying to attract certain companies to set up plants in Arizona, that were obviously special interests. It was issues involving land swaps of state land versus – so you would give the state certain land in a remote area and try to swap that for land close to a city in which you intended to do development.

Those are some of the ones I can think of that were around the time that were discussed.

Q. Are you able to identify any specific entities that fit within those categories you just described?

MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: Well, I recall that in the '80s, and maybe to some extent '90s, there was a group called the Phoenix 40 that were a group of business people that were, you know, reported to be kingmakers of [114] politicians and, you know, would help them get – raise enough money. And in sort of Arizona history, these were sort of the insiders who were – had certain – had particular business interests and were trying to, you know, maintain political influence. And while their influence may have waned with Arizona's growing population, there was – you know, at some period of time before then, they were specific individuals reputed to have a lot of power in sort of king-making Arizona politicians, so that was one type of area.

There was a lot of talk about certain developers being fat-cat individuals, which this phrase "narrow special interest" and "fat-cat individuals" were a bunch of private developers who had an enormous amount of money and were very active in giving political donations or directing political donations to Arizona politicians. That was kind of known at the time.

I mentioned a bundling issue earlier in the deposition, and some of those were – were – some of those developers were implicated or known to be involved in that kind of practice.

Q. BY MR. MAURER: And who were those developers?

A. I know there was a guy named Bob Gosnell, who was a major hotel-type person in Arizona who was – I had heard was involved in some bundling practices and [115] politicians.

There was – I know that a famous developer in Arizona was Fyfe Symington, who was involved and became governor in the few years before the Act and was involved in that.

There was several others who I couldn't name.

Q. Okay. So there was the developers –

A. And that would be individuals and corporations, by the way, of course.

Q. And did any of these overlap with the Phoenix 40 that you mentioned?

MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: Yeah. Yes, I believe that the Phoenix 40 was a group of business interests that included development interests and developers.

Q. BY MR. MAURER: And –

A. I don't know who exactly the 40 are, and don't ask me to name them.

Q. Okay. Can you name any of them?

A. No. I – I really was not – I didn't pay enough attention to know exactly who they are. I didn't move in those circles.

Q. Okay. Are there any other narrow special interests or fat-cat individuals that you can identify [116] from 1997 that you were – had in mind when you drafted the Act?

MR. DAVIS-DENNY: Objection. Form.

THE WITNESS: Well, I don't know that I sat there drafting the Act with particular special interests or ones in mind. We were trying to set a policy that would apply globally, regardless – not against particular individuals.

I do know that there had been interests that – you know, for example, Charles Keating, who was a banker, had been involved in certain federal level matters, and had, you know, certain private interests that he had been able to get politicians to accomplish on his behalf.

And, you know, there was – that was of concern to people in the public at the time, and, you know, it was an issue that had come up, a name that had been mentioned in that context.

In addition, there was special interests on both sides of the political spectrum, all sides of the political spectrum, that had particular policy goals. There was, you know, a pro-life and pro-choice and – that would, you know, be interested in a particular point of view on that. There were people who were in favor of gun control and people who were against gun control. And [117] there were people who are in favor of more religion in schools and people who were very strong at – you know, like the ACLU in opposing religion in schools.

There was – you know, you pick any issue, and there are particular interest groups on either side, in terms of, you know, who might be – there were unions that had special interests in unionizing, and there were certain corporations that had very strong interests in busting unions.

So there are, you know, any number of issues and interests that people were involved, and the idea was – of the Act was to, you know, not have such individuals and interest groups being able to control the – go get, you know, their people on, but to get good candidates who could decide on those important public interests without being beholden to one particular side and could decide what is the best policy for the state of Arizona.

Q. BY MR. MAURER: Okay. Can you tell me what the difference between a special interest and the regular interest is?

A. Well, the term "special" was meant to be referring to – was coupled with narrow, and the idea was special interests would be somebody whose only – or principal concern was one particular issue and one side of [118] a particular issue.

* * *

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[127] Q. BY MR. MAURER: Were there other goals that you sought to accomplish with Clean Elections besides that?

A. Sure. The – for one thing, there's a section of the – right at the very first section of the Act, 16-940 I think it is, has a number of goals actually stated out in the Act itself.

But one of our – what we – the goals was to – we felt that it promoted freedom of speech because candidates would have more opportunity – more candidates would have more opportunity to speak, and candidates that participated in the system would have an opportunity to speak, you know, to the voters more about their ideas and not because they weren't sitting there spending the time on the phone raising money.

There was a sense that elected officials and [128] candidates for office have to spend a lot of time raising funds rather than talking to voters and passing out messages and understanding, you know, what

their policy issues were and listening to voters. And that was another goal of the Act, to relieve public officials, you know – and once they're elected, they spend time raising funds, rather than, you know, analyzing issues or reading bills that they're going to vote on or whatever. So that was a goal.

There was a goal to avoid the unseemly appearance or actual corruption based on the parts of the – that had occurred in actual cases, like AzScam and Mecham and a variety of other bundling and various other issues that had come up before that cast aspersion on the integrity of public officials either because they were acting illegally or they were acting perfectly legally, but providing, you know, extra favors to campaign contributors in the form of extra access or the like. That was the whole goal of the Act.

There was the sense that – that there would – that you would have better policy decisions if you didn't have elected officials, you know, sometimes sacrificing the public interest in order to promote a private interest of a contributor. And that that could, you know, for example, save the state a bunch of money, [129] maybe in – you know, campaign contributors might well get – convince candidates that they had financed to give some special tax break to, you know, a category in which their businesses fell, even though it wasn't necessarily good public funding – or financing policy for the state, but, you know, promotes their private interest, and that could be detrimental to the state as a whole. So better decision-making by elected officials was a category.

Increasing the opportunity – the number and variety of voices. Increasing the, you know – decreasing the time spent by candidates and elected officials raising funds. Increasing public confidence in elected officials.

All of those were motivating factors. You know, as I say, there's a summary of those in the Act itself.

* * *

[Court Reporters Certificate Omitted In Printing]

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State Of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants.	Civil Action No. 08-1550-PHX-ROS PLAINTIFF-INTERVENOR DEAN MARTIN'S SUPPLEMENTAL RESPONSE TO DEFENDANTS' REQUEST FOR CLARIFICATION (Filed Jul. 2, 2009) (Assigned to the Honorable Roslyn O. Silver)

[1] Admitted *pro hac vice*

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.)
)
Defendant-Intervenor.)

Plaintiff-Intervenor Dean Martin hereby submits his first supplemental discovery response to Defendants' request for clarification regarding the disparity of fundraising activities in Martin's 2006 campaign as compared with this earlier campaigns in 2002 and 2004. These responses are based on information that is currently known to Plaintiff-Intervenors and may not be conclusive. Plaintiff-Intervenors reserve the right, and acknowledge their F.R.C.P. 26(e) obligation, to supplement and/or amend any of these disclosures if and when they become aware of any additional responsive information or documents.

REQUEST FOR CLARIFICATION

1. **Why is there a disparity in the apparent amount of fundraising activity that took place during Plaintiff-Intervenor Dean Martin's 2006 campaign for Arizona Treasurer as compared with his earlier races in 2002 and 2004 for the Arizona State Senate?**

As explained previously in my Declaration in support of Plaintiff-Intervenors' Amended Complaint (Doc. 59, filed September 3, 2008, Exhibit A at ¶¶ 5-8), during my 2006 campaign, I did not engage in as much fundraising as I would have otherwise due to

the presence of matching funds. Specifically, at the beginning of the primary election campaign season, I had already transferred in nearly enough money from my Senate reelection campaign committee to meet the primary matching limit, and thus any additional fundraising at that time could have triggered matching funds to my participating general election opponent as well as my potential primary election opponent. Once then-Treasurer David Petersen decided against running for re-election, CCEC did not count any primary expenditures, but rather counted all my money to date as general monies. At that point if I engaged in additional fundraising, my general election opponent would have received more free money without regard to fundraising costs, therefore further disadvantaging my campaign. My government sponsored opponent, Rano Singh Sidhu, received both primary and general funding but had no primary opponent. In contrast, I was only allowed general election funding; any additional fundraising would have harmed my campaign by providing additional funds to my opponent, As a result I engaged in very little fundraising activity in 2006.

While I was able to win that election despite this handicap, the limitation on my fundraising activities also limited my contacts with potential supporters. This lack of relationships with potential supporters will continue to be a handicap in my next election – and thus the harm from 2006 due to matching funds will actually extend into the 2010 election season.

/s/ Dean Martin	3/12/09
Dean Martin	Date

Respectfully submitted this ___ day of March, 2009.

INSTITUTE FOR JUSTICE

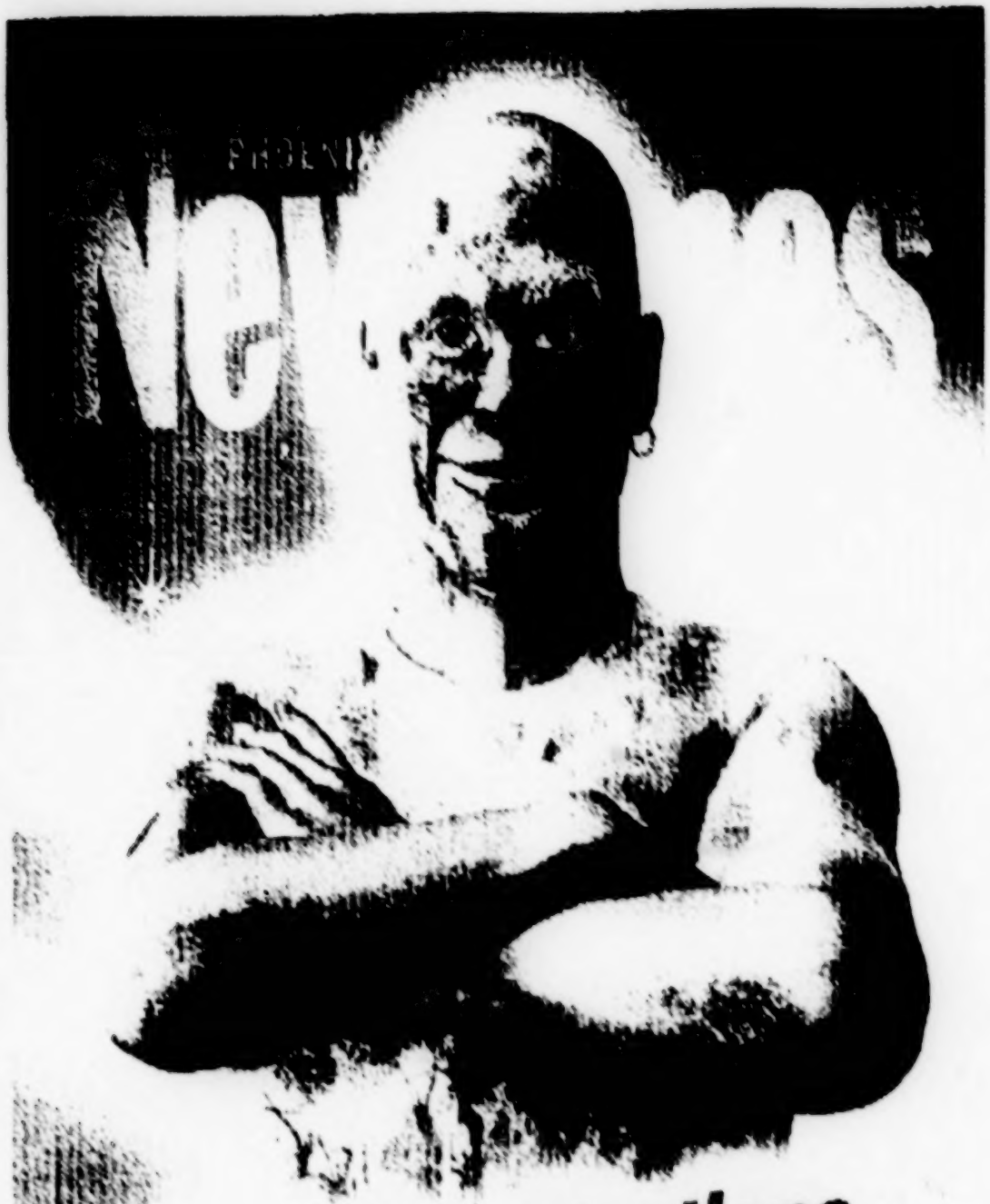
/s/ Timothy D. Keller

Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA #25451)[2]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

[Certificate Of Service Omitted In Printing]

[2] *Admitted pro hac vice*



Mr. Clean Elections

The Dirty Truth About Arizona Campaign Finance Reform.

Sarah Fenske

Nos. 10-238, 10-239

Supreme Court, U.S.
FILED
JAN 13 2011
OFFICE OF THE CLERK

In The Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

JOHN MCCOMISH, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX, VOLUME 3, PAGES 732-894

NICHOLAS C. DRANIAS*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
ndranias@goldwaterinstitute.org
Counsel for Petitioners John McComish, et al.

WILLIAM R. MAURER*
INSTITUTE FOR JUSTICE
101 Yesler Way, Suite 603
Seattle, WA 98104
Tel: (206) 341-9300
Fax: (206) 341-9311
wmaurer@ij.org
Counsel for Petitioners Arizona Free Enterprise Club's Freedom Club PAC, et al.

MARY R. O'GRADY*
Solicitor General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Solicitor.General@azag.gov
Counsel for Respondents Ken Bennett, et al.

BRADLEY S. PHILLIPS*
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Brad.Phillips@mto.com
Counsel for Respondent Clean Elections Institute, Inc.

*Counsel of Record

[Additional Counsel Listed On Inside Front Cover]

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CLINT BOLICK
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR
CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
Additional Counsel for Petitioners
John McComish, et al.

WILLIAM H. MELLOR
STEVEN M. SIMPSON
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
wmellor@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY D. KELLER
PAUL V. AVELAR
INSTITUTE FOR JUSTICE
398 South Mill Avenue, Suite 301
Tempe, AZ 85281
Tel: (480) 557-8300
Fax: (480) 557-8305
tkeller@ij.org
pavelar@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY A. NELSON
Chief Deputy Attorney General
JAMES E. BARTON II
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Additional Counsel for Respondents
Ken Bennett, et al.

GRANT A. DAVIS-DENNY
ELISABETH J. NEUBAUER
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683 9100
Fax: (213) 687-3702
Additional Counsel for Respondent
Clean Elections Institute, Inc.

MONICA YOUN
MIMI MARZIANI
THE BRENNAN CENTER
FOR JUSTICE AT NYU
SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Tel: (212) 992-8158
Fax: (212) 995-4550
monica.youn@nyu.edu
Additional Counsel for Respondent
Clean Elections Institute, Inc.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

EXPERT REPORT OF DONALD P. GREEN

I. Qualifications

My academic position is A. Whitney Griswold Professor of Political Science at Yale University. I received my doctorate in political science from University of California, Berkeley in 1988. I have taught political science at Yale University since 1989. In 1996, I was appointed Director of Yale's Institution for Social and Policy Studies, an interdisciplinary policy center founded in 1968. I am currently serving my fifth consecutive three-year term as Director.

My expertise lies in the area of campaigns, elections, research design, and statistical analysis. I regularly teach courses to undergraduate and graduate students on those topics. I have published extensively on, among other things, the topics of campaigns and elections in leading political science journals such as the *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *Electoral Studies*, *Political Research Quarterly*, and *Political Analysis*. According to a citation count published in the January 2007 issue of *PS* magazine, I am among the 100 most widely cited political scientists. A complete list of my publications is included in my curriculum vitae attached as Exhibit A. Several of my publications focus on campaign

finance and use statistical models to estimate the effects of campaign spending. I also co-authored a book entitled *Get Out The Vote: How to Increase Voter Turnout* (Brookings Institution Press, 2008), which reports the results of more than a dozen studies of political campaigns and voter mobilization drives. In the course of conducting these studies and in the year since the book was published, I have worked closely with a wide array of partisan and nonpartisan campaigns, evaluating their efforts statistically and observing first hand their day-to-day operations.

During my professional career, I have taught classes in the field of American politics and served as a reviewer for every major academic journal in this field. I have been a member of the American Politics section of the American Political Science Association since 1984 and have made scores of presentations at professional meetings and lecture series around the country. In 2005, I was elected to the Council of the American Political Science Association. I currently serve on the Board of Overseers of the American National Election Study. My scholarship has won recognition from the National Science Foundation and substantial financial support from James Irvine Foundation, Pew Charitable Trusts, Smith Richardson Foundation, Harry Frank Guggenheim Foundation, and Russell Sage Foundation. In 2004, I was elected Fellow of the American Academy of Arts and Sciences.

I am being paid $250 per hour for my work on this case, plus expenses. I have previously testified as

an expert in the following cases: *League of Women Voters of Florida v. Browning*, *League of Women Voters of Florida v. Cobb*, *Green Party of Connecticut et al. v. Garfield et al.*, *Acorn vs. Bysiewicz*, *McConnell v. Federal Election Commission*, *California Prolife Council et al. v. Fair Political Practices Commission et al.*, and *Daggett v. Webster*.

Based on my extensive experience studying campaigns and elections at the local, state and federal level, I declare under penalty of perjury that the comments in this document are true and correct.

II. The Impact of Matching Funds on the Extent and Timing of Candidate Spending

Professor David M. Primo alleges that the current system of matching funds compels "rational" candidates to change the timing of their fundraising and campaign expenditures. His hypothesis is that in order to delay participating opponents' access to matching funds, nonparticipating candidates who intend to raise or spend beyond the limit will seek to trigger matching funds as late as possible:

> [I]n the general election, a privately funded candidate may wait to raise money until the day after a trigger report is due, in order to have use of those funds for a full reporting period . . . [A] candidate may wait to raise money from donors until the very last minute, or if expenses can be incurred on credit, until after the election is completed. (p.3)

Dr. Marcus B. Osborn argues further that candidates will choose to forgo contributions altogether in order to prevent their opponent(s) from receiving matching funds.

I disagree with both of these claims on empirical and theoretical grounds. With respect to the empirical evidence, I argue below that the statistical evidence that Professor Primo adduces to support the first claim about timing is flimsy and unpersuasive. A careful examination of this statistical evidence suggests just the opposite conclusion: the system of matching funds has little or no effect on the timing of spending or fundraising by nonparticipating candidates who face participating opponents. As for the anecdotes that Dr. Osborn adduces in order to support his argument that candidates will refrain from spending or fundraising rather than trigger matching funds, I show that these anecdotes run counter to statistical trends since the advent of public funding showing increasing amounts of fundraising and spending over time by nonparticipating candidates, even those who face participating opponents. These trends suggest quite clearly that Arizona's campaign finance system in no way "compels" nonparticipating candidates to refrain from fundraising or spending. With respect to the theoretical basis for the claim that Arizona's campaign finance system compels candidates to forego contributions or expenditures, I point out that Professor Primo's and Dr. Osborn's analysis of the incentives facing candidates is superficial and incomplete. The strategic incentives associated with

the matching fund system are overshadowed by other strategic incentives that impel nonparticipating candidates to raise and spend beyond the matching threshold.

Statistical evidence on the timing of campaign spending or fundraising. Let me begin by assessing Professor Primo's statistical analysis purporting to show that candidates alter the timing of their expenditures in order to keep money out of the hands of their opponents. Professor Primo's analysis compares two types of candidates, nonparticipating candidates who run only against other nonparticipating candidates, and nonparticipating candidates who run against at least one participating candidate.[1] In constructing this comparison, his aim is to isolate the causal influence of strategic incentives created by Arizona's campaign finance system.

Before examining the statistical results of this comparison, let us first assess the soundness of the comparison itself. The key assumption underlying this comparison is that in any given election cycle the two types of candidates are identical except for the strategic incentives presented by matching funds. In the appendix of his report, Professor Primo relaxes this assumption slightly by controlling for party and

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[1] This comparison is further restricted to candidates who run in districts that are contested by major party candidates who raise or spend at least some nonnegative amount in each reporting period.

whether the candidate held prior office. Restated, his key assumption is that in any given election cycle, candidates of the same party and prior office-holding experience are identical except for the strategic incentives presented by matching funds.

This dubious assumption is backed up by neither theory nor evidence. Candidates are not randomly assigned to districts or to participating or nonparticipating opponents. On the contrary, their own decision to participate or not is presumably based on strategic and ideological considerations that are unmeasured in Professor Primo's regression model. Much of Professor Primo's published work focuses on modeling the strategic incentives that political actors confront; here, however, his analysis ignores the fact that candidates may strategically enter certain races and not others and the fact that they may base their decision to participate in the public funding system on unobserved factors that may be correlated with their ability to raise and spend campaign funds. It is my opinion that no refereed political science journal would accept the kind of simplistic comparison that Professor Primo devises, and for good reason: given the potential for unobserved factors to throw off this comparison, this type of analysis does not lend itself to reliable causal inferences.

Even if one were to put these reservations about research design aside and focus solely on the statistical evidence that Professor Primo presents in his report, the statistical evidence does not support his conclusions. According to his reading of the regression

results, the numbers support the following claims: (1) candidates competing against participating opponents raise or spend money later in the primary and general election periods, and (2) this pattern is "statistically significant," a term of art that statisticians use to characterize the robustness of an observed statistical relationship. Professor Primo's claims is that the pattern of results in his sample is unlikely to occur by chance if in fact the two types of candidates tend generally to spend/raise money in a similar fashion. The first claim is a descriptive question: how much do candidates of each type differ in terms of when they raise and spend money? The latter claim is based on a probability calculation that statisticians use in order to avoid being fooled by the idiosyncrasies of a small set of observations. In brief, Professor Primo characterizes the two groups of candidates as being substantially different in terms of their fundraising and spending, and he contends that this difference is statistically significant. I disagree on both counts.

Let us first consider the size of the gap in late-election spending and fundraising by the two types of candidates, the number that is at the heart of Professor Primo's assertion that "Type 2 candidates should try to postpone expenditures until as late in their campaign as possible in order to minimize the effectiveness of matching funds" (p.5).[2] Following Professor

[2] Primo (p.5) defines Type 2 candidates as follows: "privately funded candidates who face at least one publicly financed opponent who receives matching funds as a result of a privately

(Continued on following page)

Primo, who analyzed the natural logarithm of spending (hereafter "log spending") because "[o]ne possible problem with comparing spending and income averages is that large expenditures or donations can drive the results" (p.6), I consulted the figures he provides in Table 2H and Table 2S. In the primary election phase, Type 2 House candidates outspent their opponents in every period. Moreover, contrary to Professor Primo's hypothesis, the gap in log spending by House candidates is almost identical from period to period. In the three primary reporting periods, average log spending by Type 2 candidates exceeded the average log spending by Type 1 candidates by 26%, 27%, and 25%, respectively.[3] The same pattern obtains in

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funded candidate's spending or fundraising behavior." He defines Type 1 candidates as "privately funded candidates who either face only privately funded candidates or face publicly financed opponents, none of whom receive a match in the election."

[3] Professor Primo's reported percentage differences in the rightmost columns of Tables 2H and 2S are miscalculated. So are the percentages presented throughout Table 3. Professor Primo seems to be under the impression that the difference between two logarithms represents the percentage difference between them. Thus, he takes the difference between 8.04 and 6.44 of 1.60 to imply a 160% difference in the log of spending. To see the error, consider the comparison between a situation in which all Type 1 candidates spend $1000 and all Type 2 candidates spend $2000. In absolute dollars, this constitutes a 100% difference. The log of 1000 is 6.91, while the log of 2000 is 7.60. The difference in logs is 0.69. But a 69% difference describes neither the difference in absolute amounts nor the difference in logs. In my calculations, I calculate the percentage change in the average logs using the formula 100*((Average Log of Type 2)/(Average Log of Type 1) – 1). There is also a subtraction error

(Continued on following page)

Senate primaries: Type 2 candidates always outspent their Type 1 counterparts. The percentages (20%, 6%, 22%) jump around from period to period due to the fact there are only eleven Type 2 candidates, but again the picture is one of a relatively stable fundraising and spending advantage and not the predicted surge in last-minute spending that is supposedly "compelled" by the campaign finance rules.

Turning to the general election, the observed pattern of candidate spending shifts erratically from period to period. In the House, the data vaguely comport with Professor Primo's assertion that Type 2 candidates fundraise more at the end of the campaign than their Type 1 opponents, but the Senate data follow no distinguishable pattern. Contrary to Professor Primo's hypothesis, in the final two reporting periods Type 2 Senate candidates did not outfundraise their opponents. In period GE4, Type 2 candidates spent less than their opponents, and in GE5, the gap in log spending was just 10%, which was less than the 14% gap observed in GE2.[4] Since Professor Primo's theory of strategic incentives says nothing about why strategic incentives would operate

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in Table 2S in the GE 1 row: Professor Primo reports a difference of 60%, but his formula yields -60%.

[4] Primo (p.6) defines "the last two weeks of the [primary] campaign as PR3, the previous two-week period PR2, and the earlier two-week period PR1. The eight week general election is broken down into four two-week periods, denoted GE1, GE2, GE3, and GE4, in chronological order, and a fifth period, GE5, reflecting income received after Election Day in November."

differently for Senate candidates, the Senate results offset the supposed confirmation of the theory provided by the House data.

I would also point out that the spending and fundraising differences in question here are quite small substantively. The key finding, according to Professor Primo, is that Type 2 House candidates fundraise substantially more than Type 1 candidates in the final GE5 period. But the anti-log of 4.03 is $56, while the anti-log of 5.58 is just $265, so the difference in fundraising amounts to a meager $209. In the Senate, the corresponding figure for GE5 is $125. So even if all of the difference in fundraising were traced to the incentives created by the campaign finance system, the political consequences are negligible.

That said, I do not believe that any of the statistical patterns I have just described qualify as statistically significant, even by the most generous interpretation of that term.[5] Professor Primo's claims to the contrary are based on flawed calculations. The

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[5] Note that while convention dictates that statistical significance be accorded to patterns that would obtain by chance less than 5% of the time, Professor Primo loosens this standard to 10%. Moreover, because he calculates one-tailed tests despite the lack of strong prior evidence that the gap between spending by the two types of candidates could only go in one direction, he effectively loosens the standard of statistical significance to 20%. Even with this permissive standard, I find that his results are not statistically significant when the calculations are performed properly.

essence of Professor Primo's argument is that the gap between the two types of candidates *grows larger* as we move from the middle of the election season to the end. However, the statistical test that he performs does not test this hypothesis. Instead, he tests the hypothesis that at a *given point in time*, the two types of candidates raise and spend different amounts. This is an elementary error and one that grossly overstates the degree of support for his claim that incentives cause the gap between Type 1 and Type 2 candidates to widen at the end of the campaign.

I have recalculated the significance test in an appropriate manner, and the results are quite clear. There is no support for the claim that the gap in spending between the two types of candidates changes significantly over time.[6] In order for a statistical effect to be dubbed "statistically significant," it must

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[6] My calculations are based on the following procedure. Using the results presented in Professor Primo's Appendix C, I conducted a series of meta analysis regression models. These models test whether the coefficients in his Appendix change systematically over time, or instead change in ways that could be attributed to chance variation. I considered a wide array of interpretations of Professor Primo's hypothesis that Type 2 candidate raise/spend more than Type 1 candidates "early in the campaign and late in the campaign" (p.9). I first operationalized "late" by examining whether the coefficients after PR1 and GE1 are predicted by a linear time trend. Next, I consider whether a dummy variable for the last period predicts coefficients for periods after PR1 and GE1. Finally, I considered a quadratic specification in which the coefficients are regressed on time and time squared in order to test whether the results dip in the middle period.

have less than a 5% probability of occurring by chance. In this case, the probability of seeing gaps in spending at least as large as what the data actually show is never less than 39.9%. In other words, the pattern of results that Professor Primo presents are about what we would expect to see simply by chance if the two types of candidates were unaffected by matching fund incentives.

In sum, there is nothing in Professor Primo's statistical presentation that establishes the claim that the prospect of matching funds fundamentally alters the way in which candidates raise and spend money. On the contrary, the statistical evidence is consistent with the null hypothesis that there is no widening of the gap in spending or fundraising between Type 1 and Type 2 candidates over the course of the campaign. Let me conclude my discussion of his results by reflecting briefly on why, from a theoretical standpoint, this result is not surprising.

The argument that candidates alter their fundraising and spending patterns in light of the incentives that Professor Primo identifies is based on an incomplete account of the incentives that candidates face during a campaign. Candidates who choose to run based on private contributions may place little emphasis on the timing of their fundraising and spending activity given the many other objectives that they are pursuing at the same time. For example, candidates have strong incentives to raise money as

quickly and as vigorously as possible, because fundraising tends to be an activity that builds on itself.[1] Putting off fundraising may be problematic because it impairs one's ability to convince current donors that a growing number of fellow donors have recently contributed. Professor Primo's rendering of the strategic logic of the campaign finance system ignores the strategic imperatives of the broader campaign. This may explain why his statistical results are so flimsy: the pressure to raise and spend money late in the campaign is evidently too weak to be detected even when studying the behavior of candidates in hundreds of election campaigns.

Non-statistical evidence concerning fundraising and spending. In his supplementary report of March 13, 2009, Dr. Osborn cites three pieces of evidence to support his contention that matching funds "deter" spending. The first comes from Mr. Michael Miller's 2008 article in *PS: Political Science and Politics*. Dr. Osborn characterizes this journal as "peer reviewed," but I can say from experience, having published in that journal on more than one occasion, that it is peer reviewed only in the weakest sense of that term. This journal essentially publishes brief pieces that are thought to be timely or provocative; serious and extensive pieces of research are redirected to other academic journals. In addition to mischaracterizing

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[1] Krasno, Jonathan S., Donald Philip Green, and Jonathan A. Cowden. 1994. The Dynamics of Campaign Fundraising in House Elections. *Journal of Politics* 56(2): 459-474.

the source of his evidence, Dr. Osborn also mischaracterizes the findings themselves. For example, Dr. Osborn on page 3 describes Mr. Miller's research as finding "that every non-participating candidate felt constrained by the matching funds component of the Clean Elections Act." Mr. Miller did not survey every non-participating candidate. Instead, he attempted to survey 186 candidates running in the 2006 election cycle and succeeded in getting responses from 69 of them. According to Mr. Miller's Table 2 (p.528), 67.6% of his survey sample "accepted Clean Elections Funds," which implies that his sample contains just 22 nonparticipating candidates. The quotations that Dr. Osborn extracts from the Miller study are based on Mr. Miller's in-depth interviews with just 16 candidates, of whom (according to Table 2), 4 were non-participating candidates. So when Mr. Miller says that "[s]tories like this one were echoed by every candidate who had ever run traditionally against a Clean Elections opponent" (p.529), he is describing the comments of a very small number of candidates.

More importantly, when drawing inferences from the Miller study, Dr. Osborn completely overlooks an even more glaring deficiency, namely, the fact that it lacks a control group. Granted, the candidates talk about the strategic "considerations" that they took into account when allocating campaign resources, but this evidence does not establish a causal link between the matching fund system and how candidates actually spent their money. At a minimum, Mr. Miller should have traced the spending and fundraising behavior of

these candidates under the new system in comparison with their spending patterns under the old system.

Establishing a causal connection between the matching fund provisions and actual campaign spending decisions based on an uncritical reading of interview transcripts is particularly problematic given that Mr. Miller's respondents are sophisticated politicians who clearly understand the policy implications of their complaints about the campaign finance system. These respondents have an incentive to report that their behavior was shaped by the law. The same point applies to the anecdote that Dr. Osborn adduces concerning Ms. Maria Weeg (p.4), whose declaration asserts that expenditures would not have been made by her group had they known that the opponent would be receiving matching funds. This may well have been Ms. Weeg's position after the fact when trying to prevent an opposing candidate from accessing funds, but there is no evidence that before donating to this race, her group decided to do so based on its presupposition about matching funds.

The second piece of evidence that Dr. Osborn adduces is testimony taken in the deposition of Commissioner Lori Daniels. But the quotations on p.5 of Dr. Osborn's report merely quote Commissioner Daniels as saying that the availability of matching funds "can influence" a candidate's expenditures. Similarly, she says that the availability of matching funds "can influence" whether an independent expenditure is made. Beyond admitting the law's potential to influence behavior, her testimony says nothing

about the extent of this influence or the method by which the extent of this influence has been established empirically.

Next, Dr. Osborn cites Mr. Miller's data suggesting that between 2002 and 2006 candidates spend at least one-third of their resources in the final week of the campaign. Again, there is no control group. No effort is made to compare this figure to what candidates spent before matching funds went into effect in Arizona or to compare this figure to what candidates typically spend in state legislative races in other places that lack a public financing system. Given that the crescendo of campaign activity culminates on Election Day, it should not be surprising that a sizeable amount of money is raised and spent at that time.

Another way to look at the evidence is to note that the fact that two-thirds of resources are *not* spent until the last week of the election cycle, which contradicts Dr. Osborn's assertion that "matching funds provisions deter traditional candidates from aggressively communicating with potential voters at the beginning of the campaign because these expenditures trigger matching funds early in the election cycle" (p.5). It should be noted that Dr. Osborn's claim that matching funds "deter" spending and communication is also at odds with Professor Primo's theory that matching funds cause non-participating candidates to spend and fundraise heavily "early in the campaign and late in the campaign" (p.9). Evidently, there is no agreement on how these incentives work

theoretically or what it means in terms of dollars to "deter" communication.

Is it strategically sensible for nonparticipating candidates to refrain from spending and fundraising? Much of the rhetorical force behind the notion that matching funds "deter" nonparticipating candidates from spending derives from anecdotes about specific candidates who express misgivings about spending against participating opponents. However, adducing examples of candidates who claim that they do not want to spend for fear of providing matching funds for their competitor in no way establishes that this concern translates into actual changes in what candidates actually do. Earlier, I demonstrated that the prospect of running against a participating opponent has no statistically significant effect on the *timing* of fundraising and spending by nonparticipating candidates. Here I address the question of whether there is evidence to support the contention that the matching fund system deters nonparticipating candidates from spending campaign funds beyond the matching fund threshold.

When one examines patterns of spending by nonparticipating candidates in 2006 who were opposed in the general election by at least one participating opponent, one is struck by two facts. First, spending levels do not cluster at or around the matching fund threshold, as one would expect if nonparticipating candidates were deterred from spending past that threshold. Looking at the smooth distribution of these nonparticipating candidates' expenditures, one

would not guess that the matching fund threshold was $17,918, because there is no tendency for spending to cluster at or around this figure.[5] The second noteworthy fact is that, far from being deterred from spending, the top nonparticipating spenders in fact spend more lavishly than their 1998 counterparts, who were running prior to the introduction of matching funds. In 1998, the top ten legislative candidates facing major party opponents in the general election spent $34,622 on average (in 2006 dollars, where the inflation rate between 1998 and 2006 is assumed to be 22.2%). In 2006, the top ten nonparticipating legislative candidates facing participating major party opponents in the general election spent on average $42,162. For example, Jim Weiers in House District 10 spent $148,952 in the general election, while Jim Waring in Senate District 7 spent $70,700. The comparison between 2006 and 1998 holds as well for primary elections. In 2006, the top 10 nonparticipating legislative candidates facing participating opponents in the primary spent $61,395 on average. In 1998, average spending (in 2006 dollars) among the top 10 legislative candidates running opposed in the primary was $51,279.

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[5] Of the 46 nonparticipating candidates facing a participating opponent in the general election in 2006, 39 spent less than $15,000 and therefore never reached the matching threshold, although one candidate, Pete Hershberger, spent $12,415 and was subject to a reduced threshold of $11,945. Just one candidate subject to the $17,918 threshold spent between $15,000 and $26,000. The remaining 6 candidates spent between $26,000 and $149,000.

High levels of privately generated spending have not died out with the advent of matching funds. On the contrary, nonparticipating candidates under the current system spend at levels that equal or exceed those observed before the introduction of matching funds. I interpret these trends to mean that the matching fund system in no way compels candidates to desist from raising and spending campaign funds. Many nonparticipating candidates lack the means to raise and spend up to the matching limit. Those who are capable of exceeding the threshold may regard the flow of matching funds to their opponents with chagrin, but evidently these nonparticipating candidates are not deterred from spending beyond the limit.

III. Whether Campaign Contribution Limits are Sufficient to Eliminate the Reality or Appearance of Corruption

In both his original and supplemental report, Dr. Osborn asserts that public funding of campaigns is unnecessary if the goal is to limit the appearance of corruption. In his view, disclosure and contribution limits are sufficient, because, according to his statistical analysis, contribution limits have the effect of "reducing interest group influence" (September 24, 2008 report, p.5). However, the statistical analysis on which Dr. Osborn relies (Appendix 1 of his September report) is, on closer inspection, deeply flawed.

On page 41 of this Appendix, Dr. Osborn explains how he calculated the so-called two-stage least squares regression estimates in his report. He provides the specific formulas used to calculate the first stage of the two-stage estimator. These formulas show quite clearly that he made a serious calculation error. The first stage estimates must be generated by controlling for all of the exogenous covariates in the model that Dr. Osborn presents in Table 1 of his September report.[9] Inspection of Table 1 reveals that several variables, such as Years of Service, are missing from the equations on p.41 of the Appendix. This is an elementary mistake that, unfortunately, I have encountered often in more than twenty years of teaching graduate statistics. The results that Dr. Osborn presents are not in fact two-stage least squares regression estimates; they have no statistical interpretation.

Suppose, for the sake of argument, that Dr. Osborn had calculated these estimates properly. The results would still be no stronger than the ad hoc assumptions on which his general modeling approach is based. From the Appendix of his report, it appears that the central assumption underlying his analysis is the notion that holding a Democratic or Republican leadership position affects one's contributions from PACs and lobbyists but has no effect on one's

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[9] Stock, James H., and Mark W. Watson. 2007. *Introduction to Econometrics*. 2nd edition. Boston: Pearson. See page 435.

responses to Dr. Osborn's survey. There is no reason to believe this assumption, and Dr. Osborn makes no effort to discuss or defend it. I therefore place no weight whatsoever on Dr. Osborn's statistical claims about the limited extent to which contributions translate into legislative influence.

Dr. Osborn's thesis that contribution limits are sufficient to prevent the reality or appearance of corruption runs counter to the testimony given by those close to the fundraising process. For example, several deponents pointed out that lobbyists are able to skirt campaign contribution limits and curry favor with legislators by directing donors to the candidate or by "bundling" contributions. Mr. Querard talks about lobbyists who say

> hey, I'd like to put together an event for you and that lobbyist may actually take care of a lot of the work involved in the fundraiser to where you may be calling your Rolodex of your friends and the people you know or all the business cards you've collected at the Capitol and that may be your contribution . . . (p.43)

This point is echoed by Mr. Smolden (p.10), who notes that hosting a fundraiser is one way that lobbyists assist candidates in raising money and by Mr. Martin (p.64), who recalls how lobbyists on his fundraising committee collected donations on his behalf from their clients. Although each of the campaign donations falls below the contribution threshold, the aggregate

amounts raised by lobbyists can be considerable, as Ms. Lubin explains:

> Typically, the lobbyist makes a personal donation. Their client, the principals often make donations to candidates. And in addition, they hold fundraisers for that candidate which may include employees, members of the board of that organization, or supporters. And it's usually – even though they're individual checks, it will become obvious to the candidate whether by looking at their own campaign finance report or by having the lobbyist tell you, oh, we raised $10,000 for you tonight. So some people call it bundling. (p.19)

Bundling and other means of circumventing contribution limits amplify the influence of lobbyists. As Mr. Hoffman explains (p.20), lobbyists gain special access to legislators who are beholden to them for campaign resources. In my view, the threat of corruption is very real under these conditions. Contrary to Dr. Osborn's assertions, contribution limits alone do not alleviate the threat of corruption because the limits can potentially be circumvented when candidates remain reliant on private sources of funding.

In his supplemental report, Dr. Osborn offers an additional argument. Dr. Osborn asserts that the lobbying efforts of the Citizens Clean Election Commission create the appearance of corruption:

> The presence of a lobbying effort from a campaign regulatory agency creates the potential

> for questions from both traditional and publicly financed elected officials that there may be a relationship between the policy positions they take on election issues and their future regulatory treatment. (p.8)

No evidence is adduced to show that the CCES in fact exercises its discretion in a discriminatory fashion. And no evidence is adduced to suggest that legislators, interest group leaders, or the public believe the CCES abuses its authority or trades legislators' support for regulatory favors. In other words, Dr. Osborn offers nothing beyond his own assertion that there is "the potential for questions."

* * *

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

[Title Omitted In Printing]

List of All Candidate Committees for the 2006 General Election Cycle

Tuesday, April 14, 2009
Total Number of Committees = **162** *Total Number of Participating Committees =* **97**

Office Sought Candidate Name	Flier ID	Party	Part?	General Initial Disbursement	General Matching Disbursement	Independent Expenditures	Total Disbursement
Governor							
Hess, Barry	200291785	Lib	☐	$0.00	$0.00	$0.00	$0.00
Munsil, Len	200693378	Rep	☑	$680,774.00	$135,951.07	$11,908.71	$828,633.78
Napolitano, Janet	200693456	Dem	☑	$680,774.00	$430,486.95	$0.00	$1,111,260.95
				$1,361,548.00	$566,438.02	$11,908.71	$1,939,894.73
Secretary of State							
Brewer, Jan	200693296	Rep	☑	$143,325.00	$0.00	$0.00	$143,325.00
Hancock, Ernest	200693398	Lib	☐	$0.00	$0.00	$0.00	$0.00
Torres, Israel	200693425	Dem	☑	$143,325.00	$0.00	$0.00	$143,325.00
				$286,650.00	$0.00	$0.00	$286,650.00
Attorney General							
Goddard, Terry	200693415	Dem	☑	$143,325.00	$0.00	$0.00	$143,325.00
Montgomery, William	200693307	Rep	☑	$143,325.00	$981.03	$0.00	$144,306.03
				$286,650.00	$981.03	$0.00	$287,631.03
State Treasurer							
Martin, Dean	200693445	Rep	☐	$0.00	$0.00	$0.00	$0.00
Singh Sidhu, Rano	200693459	Dem	☑	$71,655.00	$1,827.62	$0.00	$73,482.62
				$71,655.00	$1,827.62	$0.00	$73,482.62
Superintendent of Public Instruction							
Horne, Tom	200693270	Rep	☑	$71,655.00	$0.00	$0.00	$71,655.00
Williams, Jason	200693286	Dem	☐	$0.00	$0.00	$0.00	$0.00
				$71,655.00	$0.00	$0.00	$71,655.00

State Mine Inspector							
Hart, Joe	200693419	Rep	☑	$3,530.00	$0.00	$0.00	$3,530.00
				$3,530.00	$0.00	$0.00	$3,530.00
Corporation Commissioner							
Boyer, Richard	200693453	Dem	☑	$71,655.00	$39,291.70	$0.00	$110,946.70
Fowlkes, Rick	200693485	Lib	☐	$0.00	$0.00	$0.00	$0.00
Manoil, Mark	200693424	Dem	☑	$71,655.00	$39,291.70	$0.00	$110,946.70
Mayes, Kris	200693282	Rep	☑	$71,655.00	$39,291.70	$0.00	$110,946.70
Pierce, Gary	200693527	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$214,965.00	$117,875.10	$0.00	$332,840.10
State Senator – District No. 1							
Kelleher, Josephine	200693431	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
O'Halleran, Tom	200693389	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Senator – District No. 2							
Hale, Albert	200493190	Dem	☐	$0.00	$0.00	$0.00	$0.00
Jenkins, Royce	200693404	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Senator – District No. 3							
Gould, Ron	200693272	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 4							
Gogek, Ed	200693482	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Harper, Jack W.	200693299	Rep	☑	$11,945.00	$0.00	$0.00	$11,945.00
				$29,863.00	$0.00	$0.00	$29,863.00
State Senator – District No. 5							
Cobb, Phillip B	200693438	Dem	☑	$17,918.00	$24,593.70	$0.00	$42,511.70
Flake, Jake	200693306	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$24,593.70	$0.00	$42,511.70
State Senator – District No. 6							
Gorman, Pamela	200693284	Rep	☐	$0.00	$0.00	$0.00	$0.00
Larson, Jim	200693442	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$17,918.00	$0.00	$0.00	$17,918.00

State Senator – District No. 7							
Black, Lisa	2006933434	Dem	☑	$17,918.00	$35,836.00	$0.00	$53,754.00
Waring, James	2006933256	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$35,836.00	$0.00	$53,754.00
State Senator – District No. 8							
Allen, Carolyn S	2006933319	Rep	☐	$0.00	$0.00	$0.00	$0.00
Oseran, Dan	2006933485	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Senator – District No. 9							
Burns, Robert "Bob"	2006933301	Rep	☐	$0.00	$0.00	$0.00	$0.00
Poe, Steve	2006933377	Dem	☑	$17,918.00	$0.00	$5,568.23	$23,486.23
				$17,918.00	$0.00	$5,568.23	$23,486.23
State Senator – District No. 10							
Gray, Linda	2006933353	Rep	☑	$17,918.00	$0.00	$243.23	$18,161.23
Monroe, Martin	2006933393	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$35,836.00	$0.00	$243.23	$36,079.23
State Senator – District No. 11							
Leff, Barbara	2006933290	Rep	☐	$0.00	$0.00	$0.00	$0.00
Wallack, Ann	2006933495	Dem	☑	$17,918.00	$35,836.00	$0.00	$53,754.00
				$17,918.00	$35,836.00	$0.00	$53,754.00
State Senator – District No. 12							
Blendia, Robert	2006933358	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 13							
Miranda, Richard	2006933339	Dem	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 14							
McCune Davis, Debbie	2006933384	Dem	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 15							
Cheuvront, Ken	2004930098	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Smigielski, Andrew	2006933465	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$0.00	$0.00	$17,918.00

State Senator – District No. 16							
Landrum, Leah	2006933314	Dem	☑	$11,945.00	$0.00	$0.00	$11,945.00
Veres, Daniel	2006933354	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$29,863.00	$0.00	$0.00	$29,863.00
State Senator – District No. 17							
Burton Cahill, Meg	2006933362	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Gratcher, Rose	2006933476	Rep	☑	$17,918.00	$3,464.37	$31,506.12	$52,888.49
				$35,836.00	$3,464.37	$31,506.12	$70,806.49
State Senator – District No. 18							
Johnson, Karen S	2006933266	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 19							
Gray, Chuck	2006933262	Rep	☐	$0.00	$0.00	$0.00	$0.00
Zachary, Steven William	2006933513	Dem	☑	$17,918.00	$21,966.98	$0.00	$39,884.98
				$17,918.00	$21,966.98	$0.00	$39,884.98
State Senator – District No. 20							
Gratehouse, Donna	2006933452	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Huppenthal, John	2006933298	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$35,836.00	$0.00	$0.00	$35,836.00
State Senator – District No. 21							
Tibshraeny, Jay	2006933326	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 22							
Ray, Glenn A	2006933519	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Verschoor, Thayer	2004933069	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Senator – District No. 23							
Chase, Cheryl	2004933060	Rep	☐	$0.00	$0.00	$0.00	$0.00
Rios, Rebecca	2006933454	Dem	☑	$17,918.00	$16,098.91	$18,159.09	$52,176.00
				$17,918.00	$16,098.91	$18,159.09	$52,176.00
State Senator – District No. 24							
Aguirre, Amanda	2006933366	Dem	☑	$17,918.00	$0.00	$14,584.42	$32,502.42
Jones, Russell	2006933487	Rep	☑	$17,918.00	$0.00	$35,836.00	$53,754.00
				$35,836.00	$0.00	$50,420.42	$86,256.42

State Senator – District No. 25							
Arzberger, Marsha	2006933323	Dem.	☐	$0.00	$0.00	$0.00	$0.00
Black, Mary Ann	2006933379	Rep.	☑	$17,918.00	$8,764.40	$2,000.00	$28,682.40
				$17,918.00	$8,764.40	$2,000.00	$28,682.40
State Senator – District No. 26							
Melvin, Albert Anthony	2006933295	Rep.	☑	$11,945.00	$13,791.00	$10,099.00	$35,835.00
Pesquiera, Charlene	2006933522	Dem.	☐	$0.00	$0.00	$0.00	$0.00
				$11,945.00	$13,791.00	$10,099.00	$35,835.00
State Senator – District No. 27							
Garcia, Jorge Luis	2006933372	Dem.	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 28							
Abood, Paula	2006933446	Dem.	☑	$1,290.00	$0.00	$0.00	$1,290.00
				$1,290.00	$0.00	$0.00	$1,290.00
State Senator – District No. 29							
Soltero, Victor	2004933014	Dem.	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Senator – District No. 30							
Bee, Tim	2006933263	Rep.	☐	$0.00	$0.00	$0.00	$0.00
Chimene, Jeffrey	2006933412	Dem.	☑	$17,918.00	$28,594.04	$7,241.96	$53,754.00
				$17,918.00	$28,594.04	$7,241.96	$53,754.00
State Representative – District 1							
Detwiler, Bryan	2006933312	Rep.	☑	$0.00	$0.00	$0.00	$0.00
Edmonds Jr, Wesley	2006933410	Dem.	☑	$17,918.00	$0.00	$0.00	$17,918.00
Mason, Lucy	2006933423	Rep.	☑	$11,945.00	$0.00	$0.00	$11,945.00
Seaman, George	2006933450	Ind	☑	$20,904.00	$0.00	$0.00	$20,904.00
Tobin, Andy	2006933418	Rep.	☑	$11,945.00	$0.00	$0.00	$11,945.00
				$62,712.00	$0.00	$0.00	$62,712.00
State Representative – District 2							
Kirkpatrick, Ann	2006933340	Dem.	☑	$17,918.00	$0.00	$0.00	$17,918.00
Korn, Preston J	2006933499	Rep.	☑	$17,918.00	$0.00	$0.00	$17,918.00
Tom, Albert	2006933360	Dem.	☐	$0.00	$0.00	$0.00	$0.00
				$35,836.00	$0.00	$0.00	$35,836.00

State Representative – District 3							
Groe, Trish	2006933338	Rep	☐	$0.00	$0.00	$0.00	$0.00
Lopez, Luis	2006934009	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
McLain, Nancy	2006933003	Rep	☑	$11,945.00	$0.00	$0.00	$11,945.00
				$29,863.00	$0.00	$0.00	$29,863.00
State Representative – District 4							
Boehnke, Debra	2006933385	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Boone, Tom	2006933333	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
Burgess, Judy M	2006933004	Rep	☑	$11,945.00	$0.00	$0.00	$11,945.00
				$47,781.00	$0.00	$0.00	$47,781.00
State Representative – District 5							
Brown, Jack A	2006933348	Dem	☐	$0.00	$0.00	$0.00	$0.00
Konopnicki, William	2006933321	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Representative – District 6							
Clark, Doug	2006934494	Rep	☐	$0.00	$0.00	$0.00	$0.00
Crump, Sam	2006933317	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Representative – District 7							
Barnes, Ray	2006933258	Rep	☐	$0.00	$0.00	$0.00	$0.00
Barto, Nancy K	2006933441	Rep	☐	$0.00	$0.00	$0.00	$0.00
Fox, Marilyn C	2006934429	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Lunn, Jeanne	2006933511	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$35,836.00	$0.00	$0.00	$35,836.00
State Representative – District 8							
Kavanaugh, John	2006933364	Rep	☑	$11,945.00	$19,693.60	$0.00	$31,638.60
Reagan, Michele	2006932861	Rep	☐	$0.00	$0.00	$0.00	$0.00
Rummer, Stephanie	2006933374	Dem	☑	$17,918.00	$19,693.60	$0.00	$37,611.60
Sandberg, William H	2006933391	Dem	☑	$17,918.00	$13,720.60	$0.00	$31,638.60
				$47,781.00	$53,107.80	$0.00	$100,888.80

State Representative – District 9							
Murphy, Rick	20069313422	Rep.	☐	$0.00	$0.00	$0.00	$0.00
Stamp, Bob	20069313079	Rep.	☐	$0.00	$0.00	$0.00	$0.00
Van Horsen, Sheri	20069313455	Dem.	✓	$17,918.00	$0.00	$0.00	$17,918.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Representative – District 10							
Lovejoy, Lamont	20069313496	Dem.	☐	$0.00	$0.00	$0.00	$0.00
Quellard, Doug	20069313350	Rep.	✓	$17,918.00	$35,836.00	$0.00	$53,754.00
Thrasher, Jackie	20069313392	Dem.	✓	$17,918.00	$35,836.00	$0.00	$53,754.00
Weiers, James	20069313265	Rep.	☐	$0.00	$0.00	$0.00	$0.00
				$35,836.00	$71,672.00	$0.00	$107,508.00
State Representative – District 11							
Desimone, Mark Anthony	20069313432	Dem.	✓	$17,918.00	$0.00	$0.00	$17,918.00
Driggs, Adam	20069313417	Rep.	✓	$11,945.00	$0.00	$0.00	$11,945.00
Hesselbrock, Don	20069313433	Rep.	✓	$11,945.00	$0.00	$0.00	$11,945.00
				$41,808.00	$0.00	$0.00	$41,808.00
State Representative – District 12							
Nelson, John	20069313332	Rep.	☐	$0.00	$0.00	$0.00	$0.00
Weiers, Jerry P	20069313346	Rep.	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Representative – District 13							
Gallardo, Steve	20069313255	Dem.	☐	$0.00	$0.00	$0.00	$0.00
Garcia, Martha	20069313401	Dem.	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Representative – District 14							
Campbell, Chad	20069313505	Dem.	☐	$0.00	$0.00	$0.00	$0.00
Meza, Robert	20069313259	Dem.	☐	$0.00	$0.00	$0.00	$0.00
Stevens, John	20069313352	Rep.	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00

State Representative – District 15							
Gear Jr., Robert Lee	20069343S	Rep	✓	$17,918.00	$0.00	$0.00	$17,918.00
Lujan, David	20069329A	Dem	✓	$17,918.00	$0.00	$0.00	$17,918.00
Sinema, Kyrsten	20069338T	Dem	✓	$17,918.00	$0.00	$0.00	$17,918.00
				$53,754.00	$0.00	$0.00	$53,754.00
State Representative – District 16							
Campbell Jr, Cloves	20069334S	Dem		$0.00	$0.00	$0.00	$0.00
Coleman, Daniel	20069347R	Rep		$0.00	$0.00	$0.00	$0.00
Miranda, Ben R	20069349R	Dem	✓	$11,945.00	$0.00	$0.00	$11,945.00
				$11,945.00	$0.00	$0.00	$11,945.00
State Representative – District 17							
Ableser, Edward	20069334I	Dem	✓	$17,918.00	$0.00	$17,639.88	$35,557.88
Despain, Dale	20069342S	Rep	✓	$17,918.00	$0.00	$9,433.63	$27,351.63
Knaperek, Laura	20069327T	Rep	✓	$17,918.00	$0.00	$18,367.56	$36,285.56
Schapira, David	20069346I	Dem	✓	$17,918.00	$0.00	$17,639.88	$35,557.88
				$71,672.00	$0.00	$63,080.95	$134,752.95
State Representative – District 18							
Anderson, Mark	20069338O	Rep		$0.00	$0.00	$0.00	$0.00
Pearce, Russell K	20049302O	Rep		$0.00	$0.00	$0.00	$0.00
Pursley, Tammie	20069351Z	Dem	✓	$17,957.13	$19,806.02	$0.00	$37,763.15
				$17,957.13	$19,806.02	$0.00	$37,763.15
State Representative – District 19							
Adams, Kirk D	20069326T	Rep		$0.00	$0.00	$0.00	$0.00
Crandall, Rich	20069352S	Rep	✓	$17,918.00	$17,936.66	$0.00	$35,854.66
Wibete, Lara	20069336S	Dem	✓	$17,918.00	$17,936.66	$0.00	$35,854.66
				$35,836.00	$35,873.32	$0.00	$71,709.32
State Representative – District 20							
McComish, John	20069331S	Rep		$0.00	$0.00	$0.00	$0.00
Robson, Bob	20069325T	Rep		$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00

State Representative – District 21							
Hettmansperger, Phil	2006933515	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Nichols, Wardo V	2006933313	Rep	☑	$11,945.00	$0.00	$0.00	$11,945.00
Yarbrough, Steve	2006933315	Rep	☑	$11,945.00	$0.00	$0.00	$11,945.00
				$41,808.00	$0.00	$0.00	$41,808.00
State Representative – District 22							
Biggs, Andy	2004933028	Rep	☐	$0.00	$0.00	$0.00	$0.00
Farnsworth, Eddie	2006933502	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$0.00	$0.00	$0.00	$0.00
State Representative – District 23							
Fillmore, John	2006933386	Rep	☑	$17,918.00	$0.00	$15,097.64	$33,015.64
McGuire, Barbara	2006933464	Dem	☑	$17,918.00	$0.00	$266.40	$18,184.40
Pratt, Franklin M	2006933395	Rep	☑	$17,918.00	$0.00	$15,098.64	$33,016.64
Rios, Pete	2006933470	Dem	☑	$17,918.00	$0.00	$14,931.20	$32,849.20
				$71,672.00	$0.00	$45,393.88	$117,065.88
State Representative – District 24							
Melchiorre, Joseph "Mel"	2006933481	Rep	☑	$17,918.00	$0.00	$5,013.06	$22,931.06
Pancrazi, Lynne	2006933474	Dem	☑	$17,918.00	$0.00	$2,833.32	$20,751.32
Rosevear, Ken	2006933484	Rep	☑	$17,918.00	$0.00	$5,013.06	$22,931.06
Ulmer, Theresa	2006933509	Dem	☑	$17,918.00	$0.00	$17,843.18	$35,761.18
				$71,672.00	$0.00	$30,702.62	$102,374.62
State Representative – District 25							
Alvarez, Manuel V "Manny"	2006933322	Dem	☑	$17,918.00	$0.00	$19,513.68	$37,431.68
Burns, Jennifer J	2006933422	Rep	☑	$17,918.00	$0.00	$11,422.98	$29,340.98
Fleming, Patricia	2006933365	Dem	☑	$17,918.00	$0.00	$14,590.70	$32,508.70
Griffin, Gail	2006933517	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$53,754.00	$0.00	$45,527.36	$99,281.36

State Representative – District 26							
Hershberger, Pete	2006933320	Rep	☐	$0.00	$0.00	$0.00	$0.00
Jorgenson, David A	2006933466	Rep	☑	$11,945.00	$9,681.11	$0.00	$21,626.11
Saradnik, Lena	2006933437	Dem	☑	$17,918.00	$3,708.11	$0.00	$21,626.11
				$29,863.00	$13,389.22	$0.00	$43,252.22
State Representative – District 27							
Bedford, Olivia Cinjero	2006933026	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
Chewning, Gene	2006933279	Rep	☐	$0.00	$0.00	$0.00	$0.00
Lopes, Phil	2006933280	Dem	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$35,836.00	$0.00	$0.00	$35,836.00
State Representative – District 28							
Bradley, David	2006933371	Dem	☑	$11,945.00	$0.00	$0.00	$11,945.00
Farley, Steve	2006933436	Dem	☑	$11,945.00	$0.00	$0.00	$11,945.00
Philips, Bill	2006933477	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
				$41,808.00	$0.00	$0.00	$41,808.00
State Representative – District 29							
Lopez, Linda J	2006933343	Dem	☐	$0.00	$0.00	$0.00	$0.00
Murchison, Bruce P	2006933302	Rep	☑	$17,918.00	$0.00	$0.00	$17,918.00
Prezelski, Tom	2006933403	Dem	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$0.00	$0.00	$17,918.00
State Representative – District 30							
Boykins, Clarence	2006933460	Dem	☑	$17,918.00	$11,826.10	$10,296.80	$40,040.90
McClure, Marian	2006933269	Rep	☐	$0.00	$0.00	$0.00	$0.00
Paton, Jonathan	2004933233	Rep	☐	$0.00	$0.00	$0.00	$0.00
				$17,918.00	$11,826.10	$10,296.80	$40,040.90
Grand Totals				**$3,692,594.13**	**$1,081,741.63**	**$332,148.37**	**$5,106,484.13**

IN THE UNITED STATE DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL ACTION NO. 08-1550-PHX-ROS

MAY 5, 2009

JOHN MCCOMISH, ET AL

Plaintiffs

and

DEAN MARTIN, a citizen of the
State of Arizona, et al

Plaintiff-Intervenors

-vs-

KEN BENNETT, in his official capacity
as Secretary of the State of Arizona, et al.

Defendants

and

CLEAN ELECTIONS INSTITUTE, INC.

Defendant-Intervenors

REPORTED BY: VICTORINE KALISZEWSKI
LICENSE NUMBER: 00208

[2] Deposition of DR. DONALD P. GREEN, a Witness, in the hereinbefore-entitled action, taken by the Plaintiffs, pursuant to Notice before Victorine Kaliszewski, a duly qualified Notary Public in and for the State of Connecticut, held at the Law Offices of

Benson A. Snaider, 55 Church Street, New Haven, Connecticut on May 5, 2009.

(Filed Jun. 12, 2009)
(Filed Jul. 17, 2009)

* * *

[194] How does matching funds address corruption [195] or the appearance of corruption?

A Well, in some ways, they limit the arms race from one perspective in the sense that if you're spending will trigger my spending, then you don't necessarily garner the advantage that you otherwise would in unilaterally raising your spending. It's not as though you get nothing out of your spending because, presumably, there was a rationale for your spending more, maybe you thought on the margin you were spending less more effective than my countervailing spending would be, so you might still spend anyway, but the net gain would not be as great.

* * *

[210] BY MR. MAURER:

Q I've marked as Exhibit 5 Dr. Primo's expert testimony. Can I draw your attention to page three, third line from the bottom, beginning with the – beginning with the clause beginning, I show that these anecdotes, do you see that? Page three. This is a different printout. I'm sorry, I'm looking at your – I apologize.

Let's go back to your expert report. I apologize. I apologize, once again.

Page three of your expert report, third line from the bottom, the section says, I show these anecdotes, and it says, run counter to statistical trends since the advent of public funding showing increasing amounts of fundraising and spending over time by non-participating candidates. Can you square that with your earlier discussion of the arms race?

A Yes, the arms race refers to the kind of explosion in campaign fundraising and spending that is associated with an unregulated system, or a system that doesn't involve matching funds. And part of the reason that you see an arms race is because of the uncertainty associated with how much one's opponent will spend. Whereas in the case of [211] matching funds, that uncertainty is dramatically reduced because you know how much a person will spend, you also know that eventually the match will cease as the triple matching fund provision has exceeded.

With respect to an increase, remember that this increase is very, very meager, particularly as a – as in proportion to the growth in the number of registered voters in the state of Arizona, so I think what we're talking about is more of a nonexistence, you're basically saying less you think that this money has cutoff spending, as they say deterred speech or chilled speech, in fact, people are spending even more now than they did formerly, but my arms race argument is very different, it says, had there been no limits at all, you would have seen an even greater explosion. So, there's no contradiction.

Q Okay. So, your conclusion is that clean elections has dampened the arms race or cut down on the amount of spending, but not as much as it would have occurred had clean elections not been in existence?

A I think that's correct. And just to make it clear, remember that the aggregate amount of [212] spending has increased because more candidates are being funded now than formerly, but the average spending, which is what we're talking about, did not shoot up as much as would have been the case in the absence of the law, but that the aggregate amount has increased.

Q So, you're saying that the clean election system has been successful, to some extent, in dampening the amount of spending in the campaign in Arizona?

MS. NEUBAUER: Objection, it misstates prior testimony, form.

THE WITNESS: Well, it's a bit different than that. Because, for example, on page 19 of my report, I point out that 206 legislative candidates spent a total of $6,487,133 in 2006 dollars, whereas in 1998, 177 legislative candidates spend only 1.3 million in 2000 dollars. So, more candidates are – well, approximately the same number of candidates are spending a greater amount of money, but the average spending by the top spenders has increased very slowly.

BY MR. MAURER:

Q Page four of your report. Six lines from [213] the top. The sentence beginning the strategic incentives associated with a matching fund system?

A Yes.

Q What evidence do you have to support that statement?

A That's a speculation on my part.

Q Okay. What are the other strategic incentives that you are discussing here?

A Well, principally, they are the incentives created by the expectation on the part of the spender that his or her marginal return to spending is greater than the expected marginal return to spending by that person's opponents. If I think that I'm going to get more out of my spending than my opponents are going to get out of their spending, then I have an incentive to keep right on spending.

* * *

---

[232] Q The result that after a general election occurs, type two candidates have a lot more contributions than type one candidates. Have you ever seen that result in another election?

A No.

Q Okay.

A And to the extent that I've looked at campaign spending broken down by period, you tend to see a surge in fundraising and spending often by the winner, but I don't think I've ever seen it with respect to this kind of breakdown.

* * *

[241] BY MR. MAURER:

Q Your attorney has objected a number of times on the fact that you are not a Constitutional scholar and you wouldn't be able to determine when a [242] violation of First Amendment – of a First Amendment will have occurred. On page 19, six lines from the top, you say, based on the statistical evidence, I see no grounds for the claim that a material violation of First Amendment freedoms has occurred. Do you see that, Doctor?

A Yes, I do.

Q If you're not a Constitutional scholar, how can you make that representation?

A Well, when I'm thinking of material, I'm thinking of the kinds of things that would affect either electoral accountability or representation. If you – if you think of it as a discerning reading of the First Amendment, I think you'll find it wanting. I don't pretend to have a discerning view of the First Amendment.

Q Okay. So, you really don't have any grounds for determining when a violation for First Amendment freedoms has occurred or not occurred.

MS. NEUBAUER: Objection, it misstates prior testimony, mischaracterizes testimony in the record, form.

THE WITNESS: Well, I think it's true as written based on the statistical evidence, which I see, basically, I find evidence for the [243] null hypothesis, no effect, I see no grounds for the claim that a material violation has occurred. Now that's true as written.

BY MR. MAURER:

Q Can you tell me the difference between a material and immaterial violation of the First Amendment?

A Well, again, this is based on my view, and you're free to challenge my view because it has no special authority. But my view would be a material violation has occurred when the kind of speech that would make a difference in an election or would get – would cause a group to have its views represented in some tangible way, if that kind of speech were thwarted, then there would be a material violation.

Q So, that's the standard by which you analyze whether a violation of the First Amendment has

occurred, whether there's been any difference in the outcome of an election?

MS. NEUBAUER: Objection, foundation, mischaracterizing evidence and testimony in the record.

THE WITNESS: No, I didn't say the only standard is whether an electoral outcome is [244] different, because there could be a different winner or different looser, but that's not the only criterion. For example, as a result of an election or the expression of views during an election, legislators take a different view of the kinds of interests that they must respect and take notice of.

BY MR. MAURER:

Q Okay. Do you see any grounds for an immaterial violation of First Amendment freedoms in this case?

MS. NEUBAUER: Objection, form, foundation.

THE WITNESS: Yes, if the consequence of this law is and, again, this not a statistically significance difference, but if the consequence of the law were that an average of $125 is spent less as a result of this provision, I would call that an immaterial diminution of First Amendment freedoms.

BY MR. MAURER:

Q So, the question is not whether a First Amendment violation has occurred, but whether just how bad it is?

A Yes.

* * *

[Court Reporter's Certification Omitted In Printing]

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State Of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants,	Civil Action No. 08-1550-PHX-ROS DECLARATION OF DENNIS SHANE WIKFORS ON BEHALF OF PLAINTIFF-INTERVENOR ARIZONA TAXPAYERS ACTION COMMITTEE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

[1] Admitted *pro hac vice*

and	)	(Filed Jul. 2, 2009)
	)	
CLEAN ELECTIONS INSTITUTE, INC.	)	(Assigned to the Honorable Roslyn O. Silver)
	)	
	)	
Defendant-Intervenor.	)	

1. I, Dennis Shane Wikfors, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

3. I am currently the Treasurer for the Arizona Taxpayers Action Committee ("Arizona Taxpayers"). I make this declaration on behalf of Arizona Taxpayers and in support of Plaintiff-Intervenors' Motion for Summary Judgment in the above-referenced matter.

4. In addition to Arizona Taxpayers' responses to discovery requests, my deposition on September 16, 2008, and the deposition of Chad Kirkpatrick on January 30, 2009, Arizona Taxpayers representatives, including myself, have provided statements in the form of Declarations in support of Arizona Taxpayers' claims in both this matter, as well as in *Martin v. Brewer*, No. CV 04-0200-PHX-EHC. Specifically, the following statements have been provided regarding Arizona Taxpayers' claims against the Citizens Clean Elections Act (the "Act"):

a. Declaration of Chad Kirkpatrick in Support of Amended Complaint, *Martin v. Brewer* (executed November 20, 2007);

b. Declaration of Dennis Shane Wikfors in Support of Motion to Intervene (executed August 29, 2008);

c. Declaration of Dennis Shane Wikfors in Support of Plaintiffs-Intervenors Motion for Preliminary Injunction, (executed September 3, 2008);

d. Plaintiff-Intervenor Arizona Taxpayers Action Committee's Responses to Defendants' and Defendant-Intervenors' Interrogatories Document Requests (verified September 15, 2008);

e. Plaintiff-Intervenor Arizona Taxpayers Action Committee's First Supplemental Response to Defendants' and Defendant-Intervenors' Document Requests (verified September 15, 2008);

f. Responses to Defendants' and Defendant-Intervenor's First Set of Interrogatories and Requests for Production (verified January 20, 2009);

g. Responses to Defendant-Intervenor's First Set of Requests for Admission, Second Set of Interrogatories, and Second Set of Requests for [Production] Directed to Plaintiffs and Plaintiff-Intervenors (executed February 25, 2009);

h. Responses to Defendants' First Request for Admission and Second Request for Document Production to Plaintiff-Intervenors (executed February 27, 2009);

5. I now incorporate by reference and affirm each and every prior statement representatives of Arizona Taxpayers have made on Arizona Taxpayers' behalf regarding Arizona Taxpayers' claims concerning the Act, as listed above.

6. It is my understanding that this case may remain ongoing as we approach the 2010 election season.

7. Arizona Taxpayers intends to participate in the legislative and/or statewide elections that are subject to the Act in 2010 as well as all future elections, provided fundraising enables Arizona Taxpayers to make expenditures in future elections.

8. I hereby reaffirm that the Act, in particular the matching funds provision of the Act, impacts every spending decision Arizona Taxpayers makes with regard to races in which matching finds may be triggered, forcing Arizona Taxpayers to alter its independent expenditure strategy to achieve its political goals..

9. The Act, therefore, continues to impact Arizona Taxpayers' First Amendment rights as we continue to participate in the Arizona state elections system.

/s/ Dennis Shane Wikfors 5/7/09

Dennis Shane Wikfors Date

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State Of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants.	Civil Action No. 08-1550-PHX-ROS DECLARATION OF STEVEN VOELLER ON BEHALF OF PLAINTIFF-INTERVENOR ARIZONA FREE ENTERPRISE CLUB'S FREEDOM PAC IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

[1] Admitted *pro hac vice*.

and	)	(Filed Jul. 2, 2009)
CLEAN ELECTIONS INSTITUTE, INC.	)	(Assigned to the Honorable Roslyn O. Silver)
Defendant-Intervenor.	)	

1. I, Steven Voeller, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

3. I am currently involved with and able to speak for the Arizona Free Enterprise Club's Freedom Club PAC ("Freedom Club") in this matter. I make this declaration on behalf of Freedom Club and in support of Plaintiff-Intervenors' Motion for Summary Judgment in the above-referenced matter.

4. In addition to Freedom Club's responses to discovery requests, my deposition on February 26, 2009, and the deposition of J. Fife Symington on February 4, 2009, Freedom Club representatives, including myself, have provided statements in the form of Declarations in support of Freedom Club's claims in both this matter, as well as in *Martin v. Brewer*, No. CV 04-0200-PHX-EHC. Specifically, the following statements have been provided regarding Freedom Club's claims

against the Citizens Clean Elections Act (the "Act"):

a. Declaration of the Honorable J. Fife Symington, III, in Support of Amended Complaint, *Martin v. Brewer* (executed November 26, 2007);

b Plaintiff-Intervenor Arizona Free Enterprise Club's Freedom Club PAC's Responses to Defendants' and Defendant-Intervenors' First Set of Interrogatories and Requests for Production (verified January 20, 2009);

c. Plaintiff-Intervenors' Second Supplemental Responses to Defendants' and Defendant-Intervenor's First Set of Interrogatories (verified February 3, 2009);

d. Responses to Defendant-Intervenor's First Set of Requests for Admission, Second Set of Interrogatories, and Second Set of Requests for [Production] Directed to Plaintiffs and Plaintiff-Intervenors (executed February 25, 2009);

e. Responses to Defendants' First Request for Admission and Second Request for Document Production to Plaintiff-Intervenors (executed February 27, 2009);

f. Plaintiff-Intervenors' Amended Responses to Defendants' and Defendant-Intervenor's First Set of Interrogatories and Requests for Production (verified March 18, 2009.

5. I now incorporate by reference and affirm each and every prior statement representatives of Freedom Club have made on Freedom Club's behalf regarding Freedom Club's claims concerning the Act, as listed above.

6. It is my understanding that this case may remain ongoing as we approach the 2010 election season.

7. Freedom Club intends to participate in the legislative and/or statewide elections in 2010 and future election years that are subject to the Act, provided fundraising enables Freedom Club to make expenditures in these elections.

8. I hereby reaffirm that the Act, in particular the matching funds provision of the Act, impacts every spending decision Freedom Club makes with regard to races in which matching funds may be triggered, forcing Freedom Club to alter its independent expenditure strategy to achieve its political goals..

9. The Act, therefore, continues to impact Freedom Club's First Amendment rights as it continues to participate in the Arizona state elections system.

/s/ Steven Voeller _____ 5/9/09 _____
Steven Voeller Date

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, et al.,

Plaintiffs,

and

DEAN MARTIN, a citizen of the State of Arizona, et al.,

Plaintiff-Intervenors,

-vs-

KEN BENNETT, in his official capacity as Secretary of State of Arizona; et al.,

Defendants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

Civil Action No.
08-1550-PHX-ROS

Deposition of:

KENNETH R. MAYER, Ph.D.

Madison, Wisconsin
May 12, 2009

Reported by: Theresa L. Groves, RPR

* * *

[64] Q From your testimony today, it sounds as a significant determinant of whether a public

financing system is competitive is whether the grants are sufficiently large to enable someone to run an effective campaign; is that correct?

A That's a necessary condition, yes.

Q Are there any other necessary conditions?

A You would – well, let's be clear what we're talking about here. Are we talking about what I would regard as an effective and efficient program or a program generally?

Q Well, your expertise is in studying competition and the effect public financing has on competition; correct?

A Yes. So in that regard, there are several necessary conditions for a program to be – have any meaningful effect. The first is you have to have adequate funding levels or adequate grants. The second is that you have to have some mechanism that protects the candidates who participate so that they don't fear that they would be locked into a particular funding level and wouldn't have – wouldn't remain competitive with a candidate who outspent them by a significant amount.

* * *

[Notary Certification Omitted In Printing]

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300 F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300 F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the State Of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants.	Civil Action No. 08-1550-PHX-ROS DECLARATION OF PLAINTIFF-INTERVENOR ROBERT BURNS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (Filed Jun. 12, 2009)

[1] Admitted *pro hac vice*

and	)	(Assigned to the
	)	Honorable
CLEAN ELECTIONS INSTITUTE, INC.	)	Roslyn O. Silver)
	)	
Defendant-Intervenor.	)	

1. I, Robert Burns, pursuant to 28 U.S.C. §1746(2), hereby declare under penalty of perjury as follows:

2. I am a citizen of the United States and a resident of Maricopa County, Arizona. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

3. I am currently the Arizona State Senator in Legislative District 9. I was first elected to that position in 2002, and was re-elected in November 2008. During this Legislative Session I am also serving as the Senate President. I make this declaration in support of Plaintiff-Intervenors' Motion for Summary Judgment in the above-referenced matter.

4. To support my claims in this matter, I have provided responses to discovery requests, been deposed on September 17, 2008, and provided a statement in the form of a Declaration. Specifically, I have provided the following statements regarding my claims regarding the Citizens Clean Elections Act (the "Act"):

   a. Declaration of Robert Burns, (executed August 29, 2008);

b. Responses to Defendants' and Defendant-Intervenor's Interrogatories Document Requests (verified September 17, 2008);

c. Responses to Defendants' and Defendant-Intervenors' First Set of Interrogatories and Requests for Production (verified January 15, 2009);

d. Responses to Defendant-Intervenor's First Set of Requests for Admission, Second Set of Interrogatories, and Second Set of Requests for [Production] Directed to Plaintiffs and Plaintiff-Intervenors (executed February 25, 2009);

e. Responses to Defendants' First Request for Admission and Second Request for Document Production to Plaintiff-Intervenors (executed February 27, 2009);

5. I now incorporate by reference and affirm each and every prior statement I have made regarding my claims concerning the Act, as listed above.

6. It is my understanding that this case may remain ongoing as we approach the 2010 election season.

7. I have established an exploratory committee for the 2010 election and at this time plan to participate in that election.

8. The Act will continue to impact my First Amendment rights in coming Arizona state

elections in the ways described in the materials listed in paragraph 4 above.

9. In addition to the specific impacts on my free speech rights discussed in the materials listed in paragraph 4 above, I also believe that the existence of matching funds coerces traditionally funded candidates into changing their message and the timing of getting out their message, even if ultimately the amount of messaging a traditional candidate chooses to engage in does not change.

10. In that regard, since the Act went into effect, I have been present for discussions regarding a strategy whereby traditionally funded candidates could avoid triggering matching funds to their publicly funded opponents toward the end of their general election campaigns, and yet still make necessary expenditures during that time frame. Although I have no recollection of which specific candidates or consultants engaged in this activity, I am aware that some consultants and/or candidates have considered making end-of-campaign expenditures on credit rather than raising the funds to pay for those expenditures during the general election. The candidate would then raise funds after the election to pay off the debt, and avoid triggering matching funds before Election Day.

/s/ Robert L. Burns — 5/19/09

Robert Burns — Date

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen Of the State of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, *et al.*, Defendants.	Civil Action No. 08-1550-PHX-ROS DECLARATION OF DAVID M. PRIMO, Ph.D. IN SUPPORT OF PLAINTIFF-INTERVENORS' MOTION FOR SUMMARY JUDGMENT (Filed Jun. 12, 2009) (Assigned to the Honorable Roslyn O. Silver)

[1] Admitted *pro hac vice*

and)
)
CLEAN ELECTIONS)
INSTITUTE, INC.)
)
Defendant-Intervenor.)

I, David M. Primo, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of New York, and over the age of 18 years. I make this declaration in support of Plaintiff-Intervenors' Motion for Summary Judgment based on my personal knowledge of the facts stated herein.

2. I have been asked by counsel for the Plaintiff-Intervenors to evaluate the effect of the matching funds provisions of the Arizona Clean Elections law on candidate behavior. I was paid $225 per hour for the work on my initial and rebuttal reports and $250 per hour to prepare for and participate in my deposition; in addition, I will be compensated $225 per hour for all additional work in this case, except that further court testimony or depositions, and related preparation, will be compensated at a rate of $250 per hour.

3. In this declaration, I describe: 1) my qualifications as an expert in this case; 2) pertinent characteristics of Arizona's matching provisions; 3) the incentives created by the matching provisions; 4) the dataset I used to perform my statistical analysis; 5) the results of my statistical analysis and a related

cost-benefit analysis; and 6) my conclusions. A summary of my analysis follows.

Summary

4. I remain confident in the conclusion, reached in the reports I prepared for this case, that the matching provisions of Arizona's Clean Elections law distort political speech.

5. Based on a statistical analysis of the matching provisions in Arizona's Clean Elections law, I conclude that these provisions impose significant costs on candidates and, by extension, the public.

6. Specifically, the matching provisions lead to changes in fundraising and campaign spending in ways that are harmful to free expression.

7. Based on a regression analysis, I am very confident that privately funded candidates in races where matching funds are awarded change the timing of their fundraising activities, the timing of their expenditures, and, by extension, their campaign strategies.

8. To the best of my knowledge, I am the only expert in this case to perform original research on the effect of matching funds.

9. In conducting my data analysis, I rely on data from 2000-2006 and compare patterns of fundraising and campaign spending between privately funded candidates in races where matching funds are

triggered and privately funded candidates in races where a match is not triggered. Some of my key findings include the following:

10. In primaries, privately funded candidates in House races where matching funds are awarded spent 385% more than other privately funded candidates in the final two weeks of the campaign. This is consistent with a strategy to spend money at the last minute to minimize the effectiveness of matching funds given to one's opponent as a result of such spending.

11. In the period immediately following very competitive general election races, privately funded candidates in races where matching funds are triggered raised over three times more than privately funded candidates in races where a match is not triggered. This set of results imply that matching funds provisions have a powerful effect precisely where they matter most: in very competitive races.

12. This behavior in general elections is consistent with a strategy of deferring income that could trigger a match until after the election (and, to the extent possible, funding last minute purchases on credit, which does not trigger a match in the general election) in order to reduce the amount of matching funds awarded to a publicly financed candidate.

13. These results, combined with the limited evidence in the literature that Clean Elections have improved elections or the policy process in Arizona, lead me to conclude that the harms to free expression

and the free exercise of political activity associated with Clean Elections far outweigh any benefits the law confers on the state of Arizona or its residents. In other words, the costs of this law are significant relative to its benefits.

Qualifications

14. I am an associate professor of political science at the University of Rochester. I joined the faculty in 2002 after receiving my Ph.D. in Political Science from Stanford University. I also have an M.A. in Economics from Stanford, an M.A. in Political Science from Brown University, and a B.A. in Economics and Honors Political Science from Brown. At the University of Rochester, I teach courses on American politics, positive political theory, the interplay of business and government, entrepreneurship, and campaign finance. My current vita is attached as Exhibit A and incorporated herein by this reference.

15. My research on campaign finance, public finance, methodology, and political bargaining has been published in peer-reviewed journals including *American Journal of Political Science; Journal of Politics; Election Law Journal; Economics and Politics; Journal of Law, Economics, and Organization; Business and Politics; Independent Review; State Politics and Policy Quarterly;* and *Public Choice*. My work has also been published in several edited volumes, and I have published two books. My second book, *Rules and Restraint: Government Spending and*

the Design of Institutions (University of Chicago Press, 2007), was awarded the Alan Rosenthal Prize by the Legislative Studies Section of the American Political Science Association. I have also received numerous grants to support my research, including from the National Science Foundation.

16. My research on campaign finance laws focuses on the impact of these laws on competitiveness, turnout, and perceptions of government. This research establishes that the claims reformers make about the benefits of campaign finance law often to do not hold up in practice. For instance, Primo and Milyo (2006) establish that few campaign finance laws improve citizen perceptions of government, and in fact they may sometimes negatively impact these perceptions. *See* Primo, David M., and Jeffrey Milyo. 2006. "Campaign Finance Laws and Political Efficacy: Evidence From the States." *Election Law Journal* 5(1):23-39.

17. Most of my research in the area of campaign finance law is quantitative in nature, utilizing data analytic techniques such as regression to probe relationships among campaign finance laws and outputs such as perceptions of government. This work has been cited widely in academic journals, policy reports, and the popular press.

18. I am familiar with the provisions of the Clean Elections law and with the extant political science literature on public financing of campaigns.

19. I have previously served as an expert witness in one case, *McConnell v. FEC*. In that case, which dealt with the federal Bipartisan Campaign Reform Act, I focused on the impact of campaign spending on citizen perceptions of government. I showed that at the very time that soft money receipts were increasing, so was citizen trust in government. This simple pattern in the data suggested that it was unlikely that soft money spending was harming citizen perceptions of government.

20. In this case, I have authored two reports.

21. In my initial expert report, I demonstrated statistically that the matching provisions of the Arizona's Clean Elections law distort political speech by changing the timing of fundraising and expenditures. In my opinion, the costs associated with these changed political activities far outweigh any benefits conferred by the law. My initial expert report is attached as Exhibit B and incorporated herein by this reference.

22. In my rebuttal report, I defended my statistical methodologies as sound and appropriate and reaffirmed that I remain confident that the matching provisions distort political speech. I also conducted new statistical analyses demonstrating that the matching funds provisions have a powerful negative impact in very competitive races. My rebuttal report is attached as Exhibit C and incorporated herein by this reference.

The Clean Elections Matching Provisions

23. Pursuant to Arizona's Clean Elections law, a candidate who chooses to forgo private funds in return for receiving public monies is provided with a lump sum at the beginning of the primary and general election periods. A.R.S. § 16-951. I will refer to such candidates as "publicly funded" candidates.

24. Publicly funded candidates are eligible to receive additional public monies through the Clean Elections law's matching provisions. A.R.S. § 16-952.

25. Candidates who choose not to accept public monies will be referred to as "privately funded" candidates.

26. The matching provisions operate as follows:

i) In the primary election, if a privately funded candidate spends in excess of the initial disbursements provided to publicly funded candidates in the same race, then the state of Arizona provides all publicly funded candidates in that race with a dollar-for-dollar match, up to a set amount. A.R.S. § 16-952(A).

ii) In the general election, determinations are based on money raised, as opposed to spent. A.R.S. § 16-952(B).

iii) Privately funded candidates are required to submit "trigger reports" periodically throughout both the campaign. A.R.S. § 16-941(B)(2); A.R.S. § 16-958. These reports are used by the state to determine whether any publicly

financed candidates are eligible to receive matching funds.

Incentives Created By The Clean Elections Law

27. Before turning to the data, it is useful to consider the incentives created by the Clean Elections law.

28. Privately funded candidates who expect to trigger matching funds may want to time their expenditures or income in order to minimize the effectiveness of any matching funds that are awarded.

29. For instance, in the primary, a candidate may want to wait until the last two or three days before the primary election to unleash a barrage of spending.

30. Similarly, in the general election, a privately funded candidate may wait to raise money until the day after a trigger report is due, in order to have use of those funds for a full reporting period. And as the campaign draws to a close, a candidate may wait to raise money from donors until the very last minute, or if expenses can be incurred on credit, until after the general election is completed.

31. In other words, the matching provisions should encourage a rational privately funded candidate to alter his or her fundraising and campaign expenditures to minimize the impact of matching funds in ways consistent with maximizing the likelihood of victory in the election.

32. Of course, only privately funded candidates facing at least one other publicly funded candidate and who fear that a match will be triggered should alter their behavior. Throughout this declaration, I will refer to these candidates as Type 2 candidates.

33. Privately funded candidates facing off against other privately financed candidates should not exhibit altered patterns of behavior.

34. Privately funded candidates facing off against at least one publicly funded candidate in races unlikely to trigger matching funds also should not exhibit altered patterns of behavior.

35. I will refer to privately funded candidates who should not exhibit altered patterns of behavior as Type 1 candidates.

36. Type 2 and Type 1 candidates are defined entirely based on the above criteria. For instance, some Type 1 candidates outspend some Type 2 candidates in a given period, but in other cases Type 2 candidates outspend Type 1 candidates. So, candidate spending is not included as a criterion for defining Type 1 and Type 2 candidates.

37. This theoretical perspective provides the foundation for empirically examining whether Type 2 candidates behave differently than Type 1 candidates.

Data

38. I utilized a dataset of all candidates for the Arizona House and Senate from 2000 to 2006.[5] The units of observation are candidates. For each candidate, several pieces of data were collected, including income, expenses, and experience. Some data for years prior to 2000 was used in order to construct variables for candidate experience.

39. The dataset was constructed by Dr. Dick Carpenter of the Institute for Justice using data obtained from public sources, specifically the Arizona Secretary of State's Office, the Citizens Clean Elections Commission (CCEC), and state archives. The data obtained from the Secretary of State includes official election results, voter registration totals, and campaign finance data. The data from the CCEC includes campaign finance data. A list of legislative officeholders was obtained from state archives. Dr. Carpenter's approach is typical of the way in which political scientists go about gathering data for similar types of analysis.

40. I received the data in the form of an Excel file and personally placed the file into STATA format so that I could perform my statistical analysis. During the process of placing the data into STATA format, I spot-checked the data for accuracy. I discovered

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[5] 2008 was omitted from the dataset due to data limitations.

a few errors in the vote totals and worked with Dr. Carpenter to correct those totals prior to working with the data.

41. I am confident that the dataset constructed by Dr. Carpenter is largely accurate. If I had concerns about the overall accuracy of the dataset, I would not have worked with it. In a large dataset such as this one, with well over 1,000 observations, there are bound to be some errors.

42. In addition to correcting errors in the dataset that I personally found, I also corrected the errors pointed out by Dr. Kenneth Mayer in his rebuttal to my initial expert report. In this declaration, I will refer to statistical analyses performed with the corrected data any time the corrections altered my original conclusions.

43. I followed Dr. Kenneth Mayer's coding scheme when constructing a variable for candidate type (e.g., incumbent).

44. I subdivided the data by chamber and election type and presented results for House primaries, Senate primaries, House general elections, and Senate general elections.

45. To focus on the effect of the matching provisions on candidate behavior, I restricted the sample as follows:

i) I eliminated independents and third-party candidates from my analysis.

ii) I eliminated candidates involved in races for which the number of candidates is equal to or less than the number of winners. This restriction is made by election (i.e., primary or general), so it is possible for a candidate to be excluded from the primary election analysis yet appear in the general election analysis, or vice versa.

iii) I eliminated publicly funded candidates. They do not trigger matching funds or raise money, and they are constrained in their expenditure decisions.

iv) I eliminated candidates who spent less than $1,000 or raised less than $1,000 in the primary and general election combined (all financial figures are in 2006 dollars).

v) I eliminated candidates whose records indicated negative income or a credit in the expenses category in any of the subperiods (typically two weeks in duration) in the data.

46. As restricted, that left me with 117 observations for House primary elections, 46 observations for Senate primary elections, 109 for House general elections, and 59 observations for Senate general elections.

Statistical Analysis

My Methodologies Are Generally Accepted in the Political Science Community

47. My statistical techniques are appropriate and sound. In order to examine whether Type 2 and Type 1 candidates behave in systematically different ways, performed three types of statistical analysis: difference of means tests; OLS regression; and tobit. These methods, described in further detail below, are generally accepted research methodologies in political science and appear in practically every overview textbook in econometrics. OLS regressions routinely appear in leading peer-reviewed journals in political science, and tobits and difference of means test also appear in these journals, though with less frequency, because OLS remains the "workhorse" technique for analyzing continuous dependent variables.

48. In each of my three types of statistical analysis, I used both the amounts of spending and income, in 2006 dollars, as well as the logarithms of these amounts. I converted dollars to logarithms because there were large differences between the smallest and largest values in the dataset. The use of logarithms to eliminate the influence of large values is very common in the campaign finance literature. For example, Ansolabehere, de Figueiredo, and Snyder (2003, 124) state that they convert campaign spending data into logs to "correct for the skew in . . . total [campaign] spending." They perform this conversion when working with both state-level and federal-level data.

49. Statistical significance refers to how confident the researcher is that any differences found in the data are not due to chance. In probing the differences between Type 2 and Type 1 candidates, I use a .10 level of statistical significance in one-tailed tests. In many cases, my results are statistically significant at a stricter threshold, such as .05. The .10 level of statistical significance is commonly used in peer-reviewed publications. For instance, I used one-tailed tests with a .10 significance level in my peer-reviewed article "Who Consents? Competing Pivots in Federal Judicial Selection." *See* Primo, David M., Sarah A. Binder, and Forrest Maltzman. 2008. "Who Consents? Competing Pivots in Federal Judicial Selection." *American Journal of Political Science* 52(3):471-489. This article appeared in *American Journal of Political Science*, a leading peer-reviewed political science journal.

50. In the same issue of that journal in which my article appeared, at least sixty percent of the remaining empirical articles utilized a .10 standard (with two-tailed tests where appropriate). One of these articles that utilized the .10 standard was given the award for best paper in the *American Journal of Political Science* in 2008.

Difference of Means

51. A difference of means test examines whether two groups differ on some variable in ways that are

not due to chance. A difference of means test is a useful "first cut" at the data.

52. In my reports, I utilized difference of means tests to compare the spending and income of Type 2 and Type 1 candidates.

OLS Regression

53. The next step in the analysis is to ask whether other factors may be driving the differences between Type 2 and Type 1 candidates. An OLS regression enables the researcher to isolate the effect of a single independent variable on the variable under study after the effects of other variables have been accounted for. Details on OLS can be found in Appendix A of my Expert Report.

54. In my reports, I utilized regression analysis to account for three important aspects of campaigns: the experience of the candidate, the campaign environment in the election year, and the party of the candidate. In analyses performed for the rebuttal report, several other variables were also used, including the competitiveness of the race.

55. Adding these variables to the analysis allowed me to isolate the effect of matching funds on Type 2 candidates.

Tobit

56. Finally, I used another technique, known as tobit, to account for the fact that campaign spending and income data is *censored*. Specifically, candidates sometimes raise no money or spend no money in particular periods. This censoring violates the assumption in OLS regression that the error term (E) and independent variables (the *x*'s) are uncorrelated. Tobit regression accounts for these problems. The results from the tobit analysis were largely consistent with the OLS findings. Details on tobit can be found in Appendix A of my Expert Report.

Findings and Conclusions

57. Unless otherwise specified, the results in what follows are based on OLS regressions using the log of spending or income as the dependent variable.

58. In primaries, privately funded candidates in House races where matching funds are awarded (Type 2 candidates) spent 385% more than other privately funded candidates (Type 1 candidates) in the final two weeks of the campaign. This is consistent with a strategy to spend money at the last minute to minimize the effectiveness of matching funds given to one's opponent as a result of such spending.

59. In general elections, Type 2 candidates in the House raised more than twice as much money as their Type 1 counterparts in the period following the

general election. This is consistent with a strategy of deferring income that could trigger a match until after the election (and, to the extent possible, funding last minute purchases on credit, which does not trigger a match in the general election) in order to reduce the amount of matching funds awarded to a publicly financed candidate. These results were weakened when several other variables were added to the OLS regressions. However, F-tests taking into account analyses performed for all periods implied that a more parsimonious specification (i.e., one with fewer control variables) was statistically superior in most cases.

60. Moreover, further analyses showed that in very competitive general election races, Type 2 candidates raised over three times more than Type 1 candidates in the period immediately following the general election. These additional analyses imply that matching funds provisions have a powerful effect precisely where they matter most: in very competitive races.

61. These findings imply that the matching funds provision of the Clean Elections law is leading candidates to alter campaign behavior in ways that harm free expression. Specifically, the law provides an incentive for candidates to time campaign expenditures and income so as to minimize the impact of matching funds in ways consistent with maximizing the likelihood of victory in the election.

62. My study shows that there are clear harms (i.e., costs) that result from the Clean Elections law. An examination of extant research shows that these harms are not offset by significant benefits.

63. Public financing, including Clean Elections, is argued by reformers to address at least three perceived problems in the democratic process: limited electoral competitiveness, low levels of trust in government, and excessive "special interest" influence. There is limited support for these claims in the political science literature.

64. Regarding competition, incumbent reelection rates (one measure of competitiveness) have changed little since public financing was implemented in 2000.

65. Regarding trust in government and excessive "special interest" influence, I am aware of no scientific evidence that perceptions of government have improved or any "special interest" influence has been reduced due to Clean Elections.

66. In short, there is minimal scientific evidence that public financing laws have positive effects on participatory democracy, but in my reports I demonstrated that the law imposes real costs on candidates.

Concluding Remarks

67. I remain confident in the conclusion, reached in the reports I prepared for this case, that

the matching provisions of Arizona's Clean Elections law distort political speech.

68. In my opinion, Type 2 candidates are altering their behavior as a result of the Clean Elections law in ways that infringe on their free speech rights. The effects are real and they are substantively meaningful.

69. Based on my statistical analysis of the data and the extant research on Clean Elections, I conclude that the matching provisions of Arizona's Clean Elections law have deleterious effects on free expression.

70. Based on my statistical analysis of the data and the extant research on Clean Elections, I conclude that there are few empirically demonstrated benefits to Clean Elections and significant costs to free expression.

I certify and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief. May 26, 2009

/s/ David M. Primo
David M. Primo, Ph.D.

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Chart of "Level the Playing Field" and/or "Limit Spending" References

"Level the Playing Field" and/or "Limit Spending" References	Source
"Public financing of campaigns is designed to encourage more people to seek office and to level the playing field for all candidates." "The changes in both Arizona and Maine indicate that public financing has leveled the financial playing field for candidates, making challengers more competitive."	The National Institute on Money in State Politics, *Study looks at public financing of legislative campaigns Shows Candidates Increased, Private Money Decreased in Arizona and Maine* (March 26, 2000); (CEI0000166-67); Ex. 67
"The promise of Proposition 200 is a level playing field which encourages diversity and competition in districts throughout the state. I am committed to making this promise a reality in the future."	Memo from AZ State Senator Chris Cummiskey to Sharlene Bozack of the Clean Elections Institute (April 07, 2000); (CEI0000176); Ex. 68
"What is being triggered is additional public funding to keep the playing field level between the two candidates."	Editorial response to suit against Clean Elections; (CEI0000415); Ex. 69

"Candidates must work hard to earn the right to use the Clean Elections system by gathering a threshold of $5 qualifying contributions from registered voters within their districts. They must refuse all money from political action committees and, with the exception of small initial seed-money contributions, they accept no private contributions. They must abide by spending limits adequate to run grass roots campaigns."	Clean Elections Institute Action Fund, *Frequently Asked Questions about Arizona's Clean Election System*; (CEI0000420); Ex. 70
"In order to qualify for monies from the Clean Elections Fund, a candidate must limit spending and forgo contributions from special interest groups."	Clean Elections Institute, *Talking Points* (October 2001); (CEI0000460); Ex. 71
"By thus leveling the playing field, we would eliminate the 'wealth primary' amply documented in this report by which a small group of wealthy individuals with vested financial interests decide with their contributions who will be allowed to become viable candidates for public office."	Jim Driscoll, *Who Paid to Elect Last Sessions Legislative Leaders* 33 (Arizona Citizen Action); (CEI0000986); Ex. 5

"Clean Elections reduce the influence of special interest money and provide a level playing field by offering qualified candidates a limited and equal amount of public funds."	Money & Politics Implementation Project, *Clean Elections, Year One in Action!*; (CEI0001242); Ex. 72
"Problem: Good people don't have a fair chance to compete. CMCR Solution: Provides a financially level playing field to compete." "Problem: Campaigns are too expensive CMCR Solution: Provides constitutionally acceptable spending limits" "Many candidates worry that if an opposing candidate opts out of the Clean Money system and runs on private money, he or she will have an advantage. Thus, CMCR enables qualified individuals to run for office on a financially level playing field regardless of their personal economic status or access to large contributors." "In order to maintain a financially level playing field, Clean Money candidates who are outspent by privately financed opponents, or targeted by independent expenditures, are entitled to a limited amount of matching funds."	Public Campaign, Clean Money Campaign Reform Article; (CEI0001370-1371); Ex. 73

"Two national organizations, the Club for Growth and Institute for Justice, are making the defeat of the Arizona Clean Elections law a priority and have established local chapters in Arizona. We believe that these groups are closely allied and are working with Senator Mitch McConnell (R-KY) as part of a national strategy to shut down the only reform solution that significantly benefits grassroots campaigns and goes the furthest to level the playing field against special interests."	Public Campaign, Clean Money, Clean Elections, *Defending Arizona*; (CEI0001526); Ex. 74
"So why would you think Arizona's entrenched special interests are expending every effort to limit and control the number of players in their political game? Why, to avoid at all costs fair contests in which common voters can hear all candidates – competing on a level playing field – before we vote!"	Bill Searle, *Big Money Out to Buy Elections*, Scottsdale Republic (March 26, 2004); (CEI0001538); Ex. 75

"This law levels the playing field."	Quotes From Participants In "Keep It Clean" News Conference, (March 16, 2004) (Ginger Fetzer, Co-President, League of Women Voters, Tucson); (CE10001541); Ex. 76
"Candidates who choose to run Clean abide by spending limits to keep the cost of campaigns down."	Speech outline, *Why Clean Elections is Important*; (CE10001561); Ex. 77
"The Citizens Clean Elections Act has a number of stated purposes: • Limit and equalize campaign spending"	*Law firm talking points*; (CE10001569); Ex. 78
"If we want elections, not auctions, where candidates compete on a level playing field and all voters are equal, we have to overhaul the system."	*The Big Money Election* (May 27, 2004); (CE10001611); Ex. 79
"Besides the aim of keeping candidates free of undue influence from moneyed interests, the promise of increased competition and a more level playing field for challengers is one of the main attractions of public financing proposals."	John Cochran, *Public Financing: Rebirth or Irrelevance*, CQ Weekly 806 (March 19, 2007); (CE10001680); Ex. 80

"In fact, more and more candidates generally have been opting into the system each year – from 21 percent of eligible candidates the first year to 60 percent last year – which theoretically has helped level the playing field, at least when it comes to money." "Candidates must agree to spending limits in return for the help. Two states stand out among that group and are the focus of much debate and scholarship: Arizona and Maine. They were the first to provide full public funding for candidates for statewide and legislative offices."	
"Candidates for statewide office who are running 'Clean' would receive 30 percent more funding in the race for governor and 60 percent more for other state positions. It's hoped that those changes would level the field among candidates and ensure they have enough funding."	Matthew Benson, *Clean Elections Bill Unanimously Passes in House*, Arizona Republic (March 07, 2007); (CE10001696); Ex. 81

"Clean Elections, candidates who voluntarily agree to limit their spending and to reject campaign contributions from private sources can qualify for full public financing for their campaigns after raising a certain number of small contributions ($5 in Arizona and Maine, where the system is in place for statewide elections)."	Public Campaign, The Fannie Lou Hamer Project, and The William C. Vasquez Institute, *Color of Money: The 2004 Presidential Race*; (CE10002623); Ex. 82
"We need to level the playing field so people with good ideas, but no access to money or connections, have the opportunity to run for office. They say a system that replaces private contributions with a strictly limited amount of public money won't solve all our problems, but it's a first step toward limiting campaign spending, reducing special interest influence and leveling the playing field."	Northeast Action, *Statewide Surveys – Arizona* (June 13, 1997); (CE10002733); Ex. 83

"She was entitled to the extra funding under a provision of Arizona's Clean Election law, which aims to level the playing field among candidates." "She believes strongly that publicly funded elections can play a role in enabling more people of color to run for office and compete on a level playing field."	Northeast Action, *Civil Rights and Publicly Funded Elections* 5; (CE10003068); Ex. 84
"Rep. Leah Landrum Taylor of Phoenix said Clean Elections opens up the playing field for women and minorities." "Seed money is used for campaign expenses and should be added together with the Clean Elections funding in calculating matching funds. This will result in a more level playing field." "The matching system is a critical element of the Clean Elections reform, which is all about leveling the playing field." "Let's do the right thing by keeping the matching system in place and the field as level as we can make it."	*Clean Elections Repair Kit* 4, 6, 7 (League of Women Voters of Arizona and the Clean Elections Institute); (CE10003076, 3078, 3079); Ex. 85

"The rules should help to level the playing field by incorporating reforms that serve to improve the resources available to the challengers."	The Reform Institute, *Enhancing Values: Practical Campaign Reform for States*; (CE10003101); Ex. 86
"However, if a publicly funded candidate is facing a non-publicly funded opponent whose spending exceeds the spending allowance established by the public funding rules, the law usually provides supplemental funds to the publicly funded candidate to help ensure a level financial playing field." "Moreover, it helps establish a level playing field so that a wealthy candidate or well-funded interest group can not drown out the voice of any opponents and diminish the information available to voters." "They should also incorporate a means of allowing publicly funded candidates to level the playing field when facing nonparticipating, frees pending opponents."	The Reform Institute, *Enhancing Values: Practical Campaign Reform for States* 6, 18-19; (CE10003103, 3115-3116); Ex. 86 (cont.)

"It offers full public financing to candidates for state office who reject special-interest contributions and agree to campaign spending limits." "Thus, CMCR enables qualified individuals to run for office on a financially level playing field regardless of their personal economic status or access to large contributors."	Public Campaign, *Clean Money Campaign Reform* 2, 4; (CEI0003141, 3143); Ex. 87
"If there were spending limits, it is argued, there would be a more level playing field and therefore fairer competition."	Public Campaign, *Myths and Misconceptions About Reforming the Campaign Financing System* 15; (CEI0003160); Ex. 88
"While Congress and many state legislatures appear far from any consensus on a solution, there are signs that citizens and some bold public servants are taking the lead with Clean Money Campaign Reform. Since 1996, voters in three states – Maine, Arizona, and Massachusetts have passed Clean Money proposals. In June 1997, members of the Vermont legislature voted overwhelmingly to create such a system for their state.	Public Campaign, *A winning system for voters and elected officials* 1, 2; (CEI0003179, 3180); Ex. 89

Although each law is crafted to meet the unique needs of the particular state, all establish an alternate financing system that offers full public funding to candidates for state office who reject special-interest contributions and agree to campaign spending limits." "It is an alternate system that provides strong incentives to participate qualifying candidates receive a set amount of Clean Money from a publicly financed fund if they agree to reject private money and limit their spending."	
"Public financing makes candidates less dependent on large or special interest contributions, provides them with neutral sources of funding, gives them more time to discuss their issues with voters, increases opportunities for people of color, women and new candidates to enter politics and encourages candidates to limit their spending." "Public financing increases competition by leveling the fundraising playing field."	Center for Governmental Studies, "Investing in Democracy, Creating Public Financing Elections in Your Community" v, 9, 12, 16, 17; (CE10003188, 3198, 3201, 3205, 3206); Ex. 90

"Under an ideal trigger provision, a nonparticipating candidate who exceeds the spending limit 'triggers' the elimination or raising of spending limits and the provision of additional public funds to publicly-financed candidates in the same race, to help keep them on a level playing field." "Most public financing programs share the same general features: contribution limits, spending limits, qualification thresholds, high spending opponent trigger provisions, limits on a candidate's use of personal funds and debate requirements." "Although it is possible to create a system of public financing without linking it to spending limits, all jurisdictions with public financing systems for candidates also have spending limits."	
"Under the new Clean Election systems, candidates forego large private contributions and agree to strict spending limits with fixed and equal financing from a publicly financed election fund."	Marc Breslow, PH.D, Janet Groat, Paul Saba, *Revitalizing Democracy, Clean Election Reform Shows the Way Forward* 3, 11, 30

"Candidates who choose to run for office by participating in a Clean Election system are provided with a limited and equal amount of public funds in exchange for a pledge to abide by strict spending limits." "Clean Elections helped get me on the playing field. It didn't necessarily give me the win, but it put me on the playing field so at least I could participate against the Arizona Speaker of the House."	(Money and Politics Implementation Project); (CE10003246, 3253, 3272); Ex. 91
"Second, public grants can make elections more competitive. By reducing the fundraising advantages that, in particular, incumbents have over challengers, public funding systems can 'level the playing field' and reduce the number of landslide victories."	Kenneth R. Mayer, Timothy Werner, and Amanda Williams, *Do Public Programs Enhance Electoral Competition* 4 (March 2005); (CE10003322); Ex. 92
"Supporters of public funding also contend that it levels the playing field, giving candidates of modest means equal access to the money needed to mount a viable campaign."	Megan Moore, *Clean Elections Arizona 2004* 5 (The Institution, Money in State Politics, May 18, 2006); (CE10003353); Ex. 93

"When Arizonans passed the law in 1998, they took into consideration spending limits to reduce the high cost of running campaigns. Spending limits open the door for new candidates to participate who otherwise could not have afforded the high cost of opposing an incumbent who traditionally has access to large amounts of money."	Clean Elections Institute, *The Road to Victory, Clean Elections Shapes 2002 Arizona Elections* (December, 2002); (CEI0003573); Ex. 94
"The Clean Elections funding system is founded on the premise that publicly funded campaigns encourage election competition and voter choice, level the financial playing field, and return political accountability to the voters." "Second, in order to qualify for monies from the Clean Elections Fund, a candidate must limit spending and forgo contributions from special interest groups."	Clean Elections Institute, *Impact of Clean Elections on Arizona's 2000 Election* 4, 8 (April 23, 2001); (CEI0003585, 3589); Ex. 95
"A level playing field where working people can compete with other candidates."	Arizonans for Clean Elections, *Why Labor Needs Clean Elections Reform*; (CEI0003660); Ex. 96

"The primary purpose is to judge each reform on its merits – particularly regarding its likely, or demonstrated, ability to advance the core democratic principles of political equality (by creating a level playing field for candidates and voters who do not have access to big money)." "Candidates who qualify for the same office would receive the same amount of campaign money, thus creating a financially level playing field and allowing all candidates an equal opportunity to reach the voters."	Center for Responsive Politics, *Reform Principles and Problems: Part V – Proposals for Reforming Campaign Finance* 11, 17 (1996); (CEI0003661, 3667); Ex. 97
"Voters' Major Concerns: Good people don't have a fair chance to compete" "Clean Money Campaign Reform: Provides a financially level playing field" "By providing limited but equal funding for qualified candidates, CMCR enables qualified individuals to run for office on a financially level playing field regardless of their economic status or access to large contributors."	Public Campaign, *Clean Money Campaign Reform*; (CEI0003671-72); Ex. 98

"GIVE AVERAGE CITIZENS MORE REPRESENTATION! REDUCE AND LIMIT CAMPAIGN SPENDING! STOP THE ENDLESS MONEY CHASE! STOP SPECIAL INTEREST MONEY! LEVEL THE PLAYING FIELD!"	*Clean Money = Clean Elections*; (CEI0003674); Ex. 99
"PROP 200 will create a new way for candidates to run for office. Qualifying candidates who refuse all special interest contributions and who agree to strict spending limits, receive a fixed amount of money for their race from a public Clean Elections fund." "Some of PROP 200's provisions that address key voter concerns are: Cutting the direct link between candidates and big money special interest contributors, Strict spending limits."	*So why does Arizona need prop 200*; (CEI0003675); Ex. 100
"Clean Elections in Arizona bring fairness, accountability, and a level playing field to politics."	Arizona AFL-CIO, *Arguments Against Proposition 106* (July 09, 2004); (CEI0003677); Ex. 101

"To maintain a financially level playing field, CMCR also tightens the definition of 'issue' campaigns, and it bans 'soft' money." "It would create a more level playing field for incumbents and challengers, create genuine opportunities for qualified [residents of state, Americans] to run for [statewide or legislative, federal] office, and encourage more competitive elections." "Since non-participating candidates would not be eligible to receive free and discount broadcast time, this would keep the financial playing field level." "An alternative way of leveling the playing field with respect to mass mailings is to provide all Participating Candidates (challengers and incumbents alike) a limited number of free mass mailings, in addition to their Clean Money funding."	Public Campaign, *Clean Money Campaign Reform: A Model Bill* 8, 16, 41, 54 (December 1997); (CEI0003690, 3696, 3721, 3734); Ex. 102
"Spending Limits And Leveling the Playing Field Are The Proposal's Most Popular Provisions."	The Mellman Group, *Memo to Public Campaign: Summary of Research Findings in*

"The proponents' arguments focused on limiting special interest influence, ending special favors and tax breaks, limiting spending, leveling the playing field and acknowledging that this was a first step."	*Arizona* 3, 5 (June 18, 1997); (CE10003785, 3787); Ex. 103
"I think it makes more sense to regard the primary and general as separate elections and to make sure their [sic] is a financially level playing field among competing candidates in each election." "If, on this basis, candidates in one district receive more or less money than candidates in another district, the playing field in each district would still be level, and that's what counts."	Email from Randy Kehler to: Myrna Baron; Lola Boan; Jim Driscoll; Ann Eschinger; Jon Fiegen; Linda Fries; Louis Hoffman; John De Lasaue Carol Mattoon; Gini McGirr; Marge Mead; Marjorie Mead; Louis Rhodes; Lila Schwartz; Lila Schwartz; Josh Silver; Marilou Stanley; Craig B. Holman; Randy Kehler; Nick Nyhart Subject: election commission powers (November 24, 1997); (CE10003823); Ex. 104
"To allow candidates (who can afford it) to contribute $1-5,000 to their own campaigns may not make much difference in terms of the outcome of the race as long as the money is seed money,	Email from Randy Kehler to: Mark Osterloh; Subject: Other comments on AZ initiative (June 20, 1997); (CE10003842); Ex. 105

but it undermines the basic premise of a Clean Elections system – namely, that there should be a financially level playing field for all qualified candidates."	
"This initiative would create a new approach to AZ political campaigns by shortening the length of campaign periods, limiting campaign spending, prohibiting special-interest and private contributions to participating candidates, and providing a financially level playing field." "It Blocks Special Interest Money, Creates A Level Playing Field On Which Good Candidates Can Run Competitively, And Ends The Perpetual Chase After Campaign Contributions."	Draft language for 100 word description in Arizona Secretary of State's ballot measure handbook (Arizonans for Clean Elections (CEI0003893-3895); Ex. 106
"It would create a more level playing field for incumbents and challengers, create genuine opportunities for qualified residents of state, Americans] to run for [statewide or legislative, federal] office, and encourage more competitive elections."	Email from Randy Kehler to: Mark Osterloh; Subject: New findings and declaration language (August 3, 1997); (CEI0003904); Ex. 107

"Clean Elections provides an alternative source of 'clean' funding for elections. Candidates who refuse all private donations and agree to strict spending limits may qualify for a fixed and limited amount of funding from a public source." "It limits campaign spending, removes the influence of big money from politics, levels the playing field for candidates and voters, and controls the soft money loophole." "Coalitions in six states are working to put Clean Elections on the ballot in November, 1998. It limits campaign spending, removes the influence of big money from politics, levels the playing field for candidates and voters, and controls the soft money loophole."	Arizonans for Clean Elections, Invitation to cocktail party hosted by John and Jenice Benton; (CE10004102); Ex. 108
"Candidates who voluntarily refuse all private donations and agree to strict spending limits may qualify for a fixed and limited amount of money from a citizen-funded source."	Arizonans for Clean Elections; (CE10004106); Ex. 109

"To qualify, participating candidates would: Prove they have public support by obtaining a set number of $5 contributions from constituents; Agree to campaign spending limits; and Agree not to accept private campaign contributions. In return for agreeing to run a Clean Money Campaign, the candidate will receive from the clean elections fund a set amount of money to run his/her campaign."	Arizonans for Clean Elections, *Summary of the Arizona Clean Elections Initiative*; (CE10004139); Ex. 110
"By limiting campaign spending and increasing disclosure requirements, it will level the playing field so that the voices of Arizona's working families and seniors on fixed incomes are heard just as loudly as the big money donors who are corrupting our system."	Letter from John Eichenaurer supporting clean elections; (CE10004255); Ex. 111
"You can end the money chase, halt corruption, limit campaign spending and reduce special interest influence by supporting 'Clean Elections.' The League of Women Voters of Arizona urges you to vote yes on the 'Clean Elections Act.'"	Dr. Lila J. Schwartz, President, League of Women Voters (League of Women Voters); (CE10004254); Ex. 112

"The Citizens' Clean Elections Act is the right step to clean up Arizona politics. It frees the politicians from the money chase, ends the relentless pursuit from big money, and allows more Arizonans the opportunity to serve in public office. Simply stated, it levels the playing field and stops corruption."	Letter from John Benton supporting clean elections (July 8, 1998); (CE10004259); Ex. 113
"A totally open primary system win give women a more level playing field." "Simply stated, it levels the playing field and stops corruption." "By limiting campaign spending and increasing disclosure requirements, it will level the playing field so that the voices of Arizona's working families and seniors on fixed incomes are heard just as loudly as the big money donors who are corrupting our system."	AZ Secretary of State, 1998 Ballot Propositions 55, 87, 89; (CE10004636, 4668, 4670); Ex. 114
"Clean Money, Clean Elections Limit campaign spending • Clean Election candidates must agree to fixed spending limits. Remove the influence of big money from politics • Clean Election candidates may	Campaign Brochure, *On clean elections day, this shouldn't count more than your vote* (Arizonans for Clean Elections); (CE10004870); Ex. 115

only raise a limited amount of private money. Level the playing field for voters and candidates • All Clean Election candidates who agree to spending limits and demonstrate a broad base of support receive a fixed and equal amount of citizen funds for the primary and general elections."	
"The proponents' arguments focused on limiting special interest influence, ending special favors and tax breaks, limiting spending, leveling the playing field and acknowledging that this is a first step."	Memo from Mellman Group to Public Campaign, *Findings from state surveys in Missouri, Idaho, Massachusetts and Arizona* 3 (June 18, 1997); (CE10005024) Ex. 116
"Clean elections will level the playing field."	Kris Mayes, *Public funding for elections!*, The Arizona Republic (June 25, 1997) (Quoting Marilou Stanley, State Director of United We Stand Arizona); (CE10005031); Ex. 117
"Under CMCR, candidates who voluntarily reject private money and limit their spending receive a fixed and equal amount of campaign funding from a publicly financed fund."	Public Campaign, *A Reform That Makes All Other Reforms Possible* 2, 3; (CE10005033, 5034); Ex. 118

"Clean Money Campaign Reform directly addresses each of these concerns by limiting campaign spending, eliminating special interest contributions, stopping the money chase, leveling the financial playing field, and closing loopholes."	
"The system would operate in a well-defined framework: candidates must prove broad popular support before they receive public funds; they must abide by spending limits; and they must agree to reject all sources of private money." "More important, be a 'Clean Money' spokesperson for true reform that will limit campaign spending, open the process to more good candidates, and cut special-interest ties." "It will cut the cost and reduce the length of campaigns, level the playing field so that all qualified candidates can run, and cut the direct ties between candidates and wealthy special interests."	Public Campaign, *20 Things You Can Do To Clean Up Elections* Forward, 11, 14, 27; (CEI0005038, 5047, 5050, 5063); Ex. 119

"We must curb special interest influence in policy-making, limit spending on campaigns, and free lawmakers from the money chase so they can do their jobs."	
"The CCEA allows qualified candidates who agree to spending limits and to raise little or no private money to receive a limited amount of public money." "In order to qualify for monies from the Clean Elections Fund, a candidate must limit spending and forgo contributions from special interest groups."	*Clean Elections Media Tool Kit* 1, 2; (CE10005153, 5154); Ex. 120
"Clean Money levels the playing field and reduces the influence of special interest money."	*Clean Money Basics* (CE10005158); Ex. 121
"Let's go back to basics: reform must get rid of special interest money; make elections more competitive; level the playing field; return to the principle of one person, one vote; and give average people a fair shot to run and win elective office."	*Difficult questions about clean elections*; (CE10005253); Ex. 122

"The goal of comprehensive campaign finance reform should be to create a system that reduces the influence of special interests and their money and creates a level playing field so all good, qualified candidates can run for office." "No more special interest influence. A level playing field so that senior citizen policy will no longer be dictated by organized corporate interests' campaign contributions."	*Why America's seniors should care about money in politics*; (CEI0005260); Ex. 123
"Comprehensive campaign finance reform should aim to provide a system that reduces special interests' influence and creates a level playing field so all good, qualified candidates can run for office." "A level playing field so that labor policy will no longer be dictated by corporate campaign contributions."	*Why working people should care about money in politics*; (CEI0005263); Ex. 124

"Comprehensive campaign finance reform should aim to provide a system that reduces special interests' influence and creates a level playing field so all good, qualified candidates can run for office." "In return, voters will get an end to special interest influence and a level playing field so that environmental policy will no longer be dictated by corporate campaign contributions."	*Why environmentalists should care about money in politics*; (CEI0005266); Ex. 125
"PETITION LANGUAGE This Citizens Clean Elections Act targets the corrupt system of special-interest campaign funding and enables qualified candidates to run for state office. The Act will limit campaign spending, equalize candidate funding, tighten campaign-law enforcement and ban special-interest contributions to participating candidates." "BALLOT LANGUAGE setting personal monies and spending limits for participating candidates; limiting private contributions for participating candidates unless commission declares emergency."	(CEI0005376); Ex. 126

"A 'yes' vote shall have the effect of establishing a 5-member commission to administer an additional alternative campaign financing system which includes spending limits and public funding for participating candidates;"	
"This kind of level playing field is not possible under the current system." "One of the goals of Clean Money Campaign Reform is to open up the system to as many people as possible and to establish a financially level playing field."	Public Campaign, *Just the FAQs: Frequently Asked Questions About Clean Money Campaign Reform* 5, 6; (CEI0005402, 5403); Ex. 127
"Concerned citizens are working to put on the ballot a 'Clean. Elections' initiative that restores the principles of democracy to our political system. It limits campaign spending, reduces the influence of big money special interests, and levels the playing field for candidates and voters." "Voters Concerns: Campaigns are too expensive" "Clean Money Reform: Limits campaign spending"	Clean Elections Campaign Finance Reform, *A closer look at the Arizona initiative*; (CEI0005410, 5412); Ex. 128

"Voters Concerns: People without access to big money can't compete" "Clean Money Reform: Eliminates need for fundraising Provides a financially level playing field and allows more candidates to run Shortens length of campaign period."	
"The existing clean elections system encourages participation by providing participating candidates with stability and some semblance of an even playing field."	Letter from Arizona Advocacy Network to Commissioner Gene Lemon of the Citizens Clean Election Commission (June 20, 2003); (CEI0005414); Ex. 129
"The Commission's goal is not, and has never been, to eliminate private money from Arizona politics. Rather, the Act itself serves to level the playing field for individuals who lack the private resources or contacts, but whose ideas, convictions and passion for public service lead them to seek statewide or legislative office."	Letter from L. Gene Lemon to Arizona Republic Editorial Board (February 11, 2004); (CEI0005528); Ex. 130
"In exchange for public funding, Clean Elections candidates agree to reject traditional private campaign contributions, and to abide by strict spending limits."	*What is Clean Elections*; (CEI0005666); Ex. 131

"In addition to removing the corrupting influence of special interest money from campaigns, advocates say that clean elections levels the electoral playing field by removing nearly insurmountable financial barriers faced by people without personal wealth or access to traditional sources of campaign money." "Now, the clean-elections approach, with its emphasis on public funding, shifts the playing field fundamentally toward equality."	Peter Ross Range, *Running Clean*; (CEI0005684); Ex. 132
"Additionally, as special interest influence is removed, elections are made more competitive, thereby allowing citizens commonly ignored in money-dominated races to be heard because the playing field is leveled."	Melissa Roberts, *Students Fight for Clean Elections*, Arizona State Press (February 17, 2003); (CEI0005701); Ex. 133
"Clean Elections levels political playing field"	Millicent Gray Parks, Letter to the Editor, Scottsdale Tribune (July 22, 2003); (CEI0005706); Ex. 134
"This system allows ordinary citizens to run for the Legislature and statewide office. It reduces the influence of	*Arizona's Groundbreaking Clean Elections System is in Danger*; (CEI0005802); Ex. 135

big money special interests on state government. And it acts to hold down overall campaign spending."	
"Candidates who wish to take part in the system must raise a set number of these $5 contributions from Arizona residents. They then qualify to receive a public grant to run their campaigns. Once they accept this grant, they must abide by strict spending limits and can no longer raise any private money for their campaign."	Public Campaign, *All Over the Map* 1 (CEI0005888); Ex. 136
"Candidates who participate in Clean Elections must demonstrate broad public support in their districts or across the state by raising a large number of very small ($5) contributions along with gathering the required petition signatures. In 2006, the number of $5 contributions required for a legislative candidate was 210. In addition, candidates must agree to adhere to spending limits and raise very limited private money."	Clean Elections Institute, *About Clean Elections in Arizona*; (CEI0006015); Ex. 137

"Most importantly, however, will be the personalized press relationships that were developed in the campaign and will be continued by CEI. These personal relationships insure that stories that include clean elections will have balanced coverage and that CEI will always be able to comment on issues of concern, thus providing a broader view to the public and maintaining a level playing field in the battles ahead."	*The Battle for Clean Elections Continues*; (CEI0006053); Ex. 138
"Rep. Manuel Alvarez (D-Elfrida) says Clean Elections made it possible for him to run from his rural district in southeast Arizona without relying on lobbyists based at the State Capitol in Phoenix: 'Clean Elections gives me an opportunity to run on an even playing field . . .'"	Participating candidate quotes about Clean Elections; (CEI0006063); Ex. 139
"Supporters of continuing the Clean Elections Act cite an honest electoral process, leveling the playing field, greater accountability and control, and a need to police the electoral process as the main reasons for supporting the Act."	Memo from Mike Becker to Clean Elections Commission, Subject: Behavior Research Center, Inc., Survey 10 (March 2, 2006); (CEI0006085); Ex. 140

"Clean Elections levels the playing field by encouraging small ($5) in-district donations that most citizens can afford. Clean Elections does not aim to rid the political system of money – that's impossible. What Clean Elections does is level the playing field, so that any qualified person – not just those with access to big money – can run a competitive campaign for office."	*Myth vs. Fact* 5 (March 3, 2005); (CEI0006321); Ex. 141
"Qualifying Candidates qualify by collecting a large number of $5-qualifying contributions from registered voters within their districts or across the state for statewide candidates. These candidates agree to adhere to spending limits and do not raise any private money."	Clean Elections Institute, *Working Arizonans Win With Clean Elections*; (CEI0006472); Ex. 142
"The most important difference is that in a Clean Money system, a candidate like Dean wouldn't have to keep raising money to stay abreast of a privately-financed system-buster like Bush; he'd be getting infusions of additional matching funds (of up to two or three	Memo to Clean Elections supporters from Public Campaign, Re: Howard Dean, George Soros and the future of public financing (December 19, 2003); (CEI0006531); Ex. 143

times his baseline grant) to keep a relatively level playing field."	
"How The Clean Election Laws Work: Candidates in both Maine and Arizona can opt into the public financing system by agreeing to take no private money other than the minimal amounts they must, under the law, raise to qualify for public funds and a minimal amount of seed money they may raise in addition. They also must agree to spending limits, while in both states, non-participating candidates face limits on contributions they may accept."	*Draft Outlines for Maine/Arizona Release*; (CEI 0006553); Ex. 144
"Clean Elections Candidates Reject special interest money, Agree to campaign spending limits, Contribute very limited personal money."	Clean Elections Institute, *2006 Campaign Training*; (CEI0006675); Ex. 145
"Clean Money, Clean Elections would level the playing field for all candidates and ensure fair elections." "In 2001 Sen. Wellstone introduced legislation that was considered the Gold Standard of campaign	"Campaign Finance Reform, 2004 Wellstone Academy Arizona, Presented by: Clean Elections Institute" 3, 5; (CEI0006844, 6846); Ex. 146

finance reform Would provide candidates public funding if they agree to: forgo private contributions agree to strict spending limit."	
"Provides spending limits and restrictions"	Clean Elections Institute, *2002 Election Second Level Training for Candidates and Mangers: Talking Points*; (CE10006867), Ex. 147
"Arizona voters passed the Citizens Clean Elections Act by initiative in November 1998. The law was enacted to diminish the influence of big money special interests and encourage citizen participation in the political process by both voters and candidates. The Act created a system of voluntary full public financing for state offices where candidates must agree to spending limits, accept very limited private and personal donations and are prohibited from taking political action committee or corporate funds."	Clean Elections Institute, *Arizona Clean Elections Law, an Overview*; (CE10006948, 6949); Ex. 148

"Clean Elections candidates must agree to Spending limits Limited personal and private donations Accept no corporate or political action committee (PAC) money."	
"Not too long ago, the citizens of Arizona realized a critical need to address how statewide and legislative elections are conducted. Recognizing a desire to remove special interest money from Arizona politics and to level the playing field in campaign financing, Arizona voters approved the ballot initiative establishing the Citizens Clean Elections Commission, in 1998."	Todd Lang, *Big Money Contributions in Political Races Will Open Floodgates in 2006 Race* (April 17, 2006); (CE10007107); Ex. 149
"The editorial misses the point of 'clean' or publicly financed elections, which allow candidates to run for office without being beholden to lobbyists and wealthy campaign donors. This is a practical, proven reform that levels the playing field so that qualified people, many of whom otherwise would not have run, can launch a competitive campaign."	Nick Nyhart, Executive Director, Public Campaign, *Letter to the Editor*; Los Angeles Times (CE10007440); Ex. 150

"As we become aware that certain major lobbyists give candidates, in addition to the perks, the bulk of their campaign contributions, it is clear why we need the Clean Elections law so that average citizens can influence legislators on a level playing field with the lobbyists!"	Marjorie Thornton, *Keep your eyes on those lobbyists* Arizona Republic (June 27, 2006); (CE10007508); Ex. 151
"Participating candidates are only limited to their set allocation if their opponents, or some independent expenditure committee, don't spend more than that amount. If they're outspent, participating candidates get extra equalizing funds (up to a maximum limit) to level the playing field."	Eric Ehst, *Clean Elections levels the playing field!*, Opinion Editorial; (CE10007782); Ex. 152
"Two privately funded state legislators will attempt to level the playing field by changing laws they say put traditional candidates at a financial and strategic disadvantage."	Christian Palmer, Luige del Puerto, Jim Small, and Phil Riske, *Top Ten Issues to Watch in 2007*, Arizona Capital Times; (CE10007797); Ex. 153
"'Under the Davis opinion, I think the matching-funds provision is very, very suspect,' said Gordon. 'And the whole point of the matching funds is to level the playing field.'"	*Matching Funds Called Into Question*, Arizona Capital Times (August 1, 2006) (Quote from Andy Gordon); (CE10007858); Ex. 154

"Regardless of the outcome of Prop 105, forces in the Legislature are gearing up to place significant restrictions on the initiative process that will make it much harder for grassroots groups to qualify measures for the ballot, tilting the playing field even further in favor of well-financed special interests."	Clean Elections Institute, *Clean Elections Institute Launches "Choose Democracy Project"* (October 9, 2008); (CE10007918); Ex. 155
"Matching funds are available to allow participating candidates to keep their campaign funds equal to their non-participating opponent."	*Clean Elections Press Kit, Revised, May 2003*, (CE10007955); Ex. 156
"Candidates who demonstrate a serious level of community support by collecting a set number of $5 contributions from voters in their district, can qualify for Clean Elections funding provided they agree to abide by spending limits and not raise any private money."	Clean Elections Institute Press Release *Clean Elections System Produces More Electoral Competition* (September 11, 2000); (CE10007980); Ex. 157
"2. Arizona's Clean Elections system levels the financial playing field."	*Clean Elections Institute Annual Report* (CE10008148); Ex. 158

"When a non-Participating candidate attempts to outspend their Clean Elections opponent, the Clean Elections candidate can receive matching funds, leveling the playing field."	
"Now we now [sic] we cant make these big interests go away and disappear. They will be powerful in any political system but we can change the rules so the fight is more fair and the playing field is more level."	AZ AN Forum Comments; Nick Nyhart; Executive Director of Public Campaign (June 1, 2006); (CEI0008169); Ex. 159
"Clean Elections also puts voters on a level playing field, with teachers having the same power as a corporate CEO." "If a candidate is outspent by a privately financed opponent, rescue funds are available to keep the race on a level playing field."	Public Campaign, *Leveling the Playing Field*; (CEI0008199, 8200); Ex. 160
"Like matching programs, these are voluntary and available to qualified candidates who show a broad base of support and agree to certain fundraising and spending caps (Lerner, 2007). Clean money	NALEO Educational Fund Report, *How Much Help? Public Campaign Financing and Latino Candidates* 18, 51 (April 2008); (CEI0008523, 8551); Ex. 161

initiatives aim to eliminate any conflict of interest that might arise from accepting large private contributions. They thereby seek to improve voters faith in the political process, boost voter turnout, and most significantly improve competition by leveling the playing field for political newcomers and those unable to contribute personal wealth to their own campaign." "Candidates can qualify for the program if they face competition in an election, meet a threshold amount in contributions, and agree to set spending limits."	
"I believe that while not perfect, Clean Elections helps level the playing field for those interested in seeking public office."	Gary Cox, House Candidate District 12, *Clean Elections Alumni Quotes*, Glendale Star (August 8, 2002); (CEI0008667); Ex. 162
"Given the option of a clean alternative that frees them from constantly dialing for dollars, and puts them on a level-playing field with their opponents, hundreds of	Public Campaign, *Donor-Free Clean Elections Taking Hold* (May 14, 2002); (CEI0013483); Ex. 163

candidates in Arizona, Maine and Massachusetts from across the political spectrum are showing that there's a better way."	
"Clean Elections has leveled the playing field among candidates."	Cecilia Martinez, Executive Director of CEI (October 17, 2002); (CEI0013496); Ex. 164
"The Clean Elections Act, passed by Arizona voters in 1998, provides public funds to candidates who agree to forgo the use of special interest money in their campaigns in addition to adhering to stricter spending limits."	Information on Clean Elections forum hosted by Native American Community Organizing Project; (CEI0013621); Ex. 165
"The Clean Elections law promotes competition, eliminates special interest money, and levels the playing field."	*2004 Election in the Foreground*; (CEI0013723); Ex. 166
"During the next election cycle of 2002 more people are expected to choose this alternative campaign financing method that seeks to level the playing field for candidates and remove special interest monies from our electoral process."	Letter from Sharlene Bozack & Barbara Lubin (March 23, 2001); (CEI0013769); Ex. 167

"c. Candidates who choose to run Clean agree to spending limits, cannot accept PAC or corporate money, and can only put in a limited amount of personal money."	Clean Elections Institute, *Talking Points for Group Presentations*; (CEI0013770); Ex. 168
"Qualifying Candidates qualify for public funding by collecting a large number of $5-qualifying contributions from registered voters within their districts or across s the state for statewide candidates. These candidates agree to spending limits and do not raise any PAC money. They may raise a limited amount of seed money from private donors in $110 contributions or less."	Clean Elections Institute, *About Clean Elections in Arizona;* (CEI0014357); Ex. 169
"The whole intent of the Citizens Clean Elections Act was to level the playing field between candidates. A.R.S. § 16-940(A)." "The informational pamphlet distributed by proponents of the initiative reflects a desire to level the playing field for candidates and voters."	Letter from Timothy Hogan to Jeffrey P. Larson, Arizona Auditor General's Office; (CEI0014348, 14349); Ex. 170

"As one of those who originally drafted the Clean Elections initiative, which the voters approved, I realized that to level the playing field Clean Elections would have to provide matching funds to those candidates who did not have access to 'big money' doled out by major interest groups."	Editorial by Lila J. Schwarta, *Matching funds level playing field* (December 7, 2004); (CEI0014559); Ex. 171
"Matching funds limit spending. A traditional candidate may think twice about raising additional funds in a race against a Clean Elections candidate."	*Justifications for Clean Elections Matching Funds;* (CEI0015007); Ex. 172
"Citizens Clean Elections website says the law, 'encourages broad-reaching citizen participation in the political process and eliminating special-interest monies in campaigns, the Act levels the playing field for qualified candidates by providing limited and equal funding, and enables registered voters to support their preferred candidates through affordable contributions and grass-roots support."	Sylvia Allen, Snowflake Pioneer (March 16, 2005); (CEI0015073); Ex. 173

"Ableser said Clean Elections motivated him during his 2004 campaign for a seat in the House. 'The fact that we were all on the same playing field was very important . . . and something I'm very committed to', Ableser said."	*ASU Club Hosts Clean Elections Summit,* Arizona State Press (April 11, 2005); (CEI0015092); Ex. 174
"The campaign finance reform measure created public funding for qualified candidates. Its meant to encourage broad citizen participation in the political process, eliminate special interest money in campaigns and level the playing field for candidates." "Autumn Southard, voter education manager at the Clean Elections Commission, said campaign finance reform is a difficult subject for voters to understand. The ad push is meant to drive voters to the Clean Elections Web site to learn more about the process. 'We wanted to let people know that there was an easy way to get involved, as easy as putting a bumper sticker on your car,' she said. 'You can get involved for as little as $5 and help to level the political playing field.'"	Laura Newpoff, *Clean Elections Kicks Off Campaign To Educate Voters,* The Business Journal (September 16, 2005); (CEI0015111); Ex. 175

"On the other hand, Arizona more than five years ago enacted into law what is known as the Clean Money Act. It allows candidates to obtain full public funding to conduct their campaigns if they agree to spending limits. The candidates become eligible to get on the ballot and qualify for public financing by raising a minimum number of $5 contributions from citizens."	Dave Zweifel, *Arizona Shows Way on Finance Reform,* Arizona Capital Times (April 6, 2005); (CEI0015113); Ex. 176
"The Institute considers it critical that the Commission promptly and vigorously enforce campaign spending provisions of the Act and impose meaningful penalties on violators. We believe this is crucial to the credibility of the entire system."	Clean Elections Institute (CEI0015274); Ex. 177
"Most importantly, however, will be the personalized press relationships that were developed in the campaign and will be continued by CEI. These personal relationships insure that stories that include clean elections will have balanced coverage	*The Battle for Arizona Clean Elections Continues*; (CEI0015668); Ex. 178

and that CEI will always be able to comment on issues of concern, thus providing a broader view to the public and maintaining a level playing field in the battles ahead."	
"Known as the Citizens Clean Elections Act, the new law aimed to diminish the influence of private money in political campaigns and level the electoral playing field through voluntary public financing of political campaigns as an alternative to traditional fundraising means."	Daniel M. Weeks, *Effects of Full Public Financing on Electoral Competition: A Comprehensive Assessment of Arizona's Clean Elections Law* (April 26, 2004); (CEI0016102); Ex. 179
"Barbara Lubin, executive director of the Clean Elections Institute, a private nonprofit group established to promote and defend Arizona's public election financing system, said the law protects candidates who accept spending limits."	David Pittman, *Refusing Public Money Perhaps Sank Salmon*, Tucson Citizen (July 30, 2003); (CEI0016305); Ex. 180
"The Citizens Clean Elections Act was passed by the people of Arizona in 1998 to level the playing field when it comes to running for office."	Citizens Clean Elections Commission, *Get Involved* (CCEC website page printed September 16, 2008); Ex. 181

"Help Clean Elections level the playing field. In 1998 the citizens of Arizona voted to create a funding system to help level the playing field for people running for office."	Citizens Clean Elections Commission, *Check the Box!* (CCEC website page printed September 16, 2008); Ex. 182
"For the average citizen, clean elections means a voice in the political process. For candidates, it levels the playing field."	Video created by the Citizens Clean Election Commission (January 27, 2008), available at http://www.youtube.com/watch?v=vwsq612L6CY&feature=channel_page (last accessed June 11, 2009) Ex. 183

U.S. District Court for the District of Arizona

(Filed Jun. 12, 2009)

[Title Omitted In Printing]

Pursuant to Local Rule 56.1(a), Defendants Ken Bennett, et al., and Defendant-Intervenor Clean Elections Institute, Inc. ("CEI") submit the following Joint Statement of Undisputed Facts as to which there is no genuine issue for trial.

	FACTS NOT GENUINELY IN DISPUTE	SUPPORTING EVIDENCE
1.	The Baltimore Sun reported that, in 1988, Governor Evan Mecham was indicted on charges of perjury, fraud and failure to report a campaign contribution and was later impeached and ousted from office.	Declaration of Tanja K. Shipman in Support of Defendants' Motion for Summary Judgment ("Shipman Decl.") Ex 1 (*Arizona Ponders Its High-Office Headaches*, Baltimore Sun, August 12, 1997).
2.	The New Orleans Times reported that savings-and-loan tycoon Charles Keating's financial empire collapsed and that his relationships with Arizona politicians prompted Senate Ethics Investigations.	Shipman Decl. Ex 2 (*Trying to Repair A Damaged State*, New Orleans Times Picayune, May 10, 1991).

3.	The Los Angeles Times reported that, in the early 1990s Governor Fife Symington was investigated over a conflict of interest, and in 1997 he was convicted of bank fraud and resigned from office.	Shipman Decl. Ex 3 (*Arizona Governor Guilty of Fraud, Forced to Resign*, Los Angeles Times, September 4, 1997).
4.	In 1991, a police sting operation popularly known as "AzScam" caught state legislators on videotape accepting cash bribes and campaign contributions in return for agreeing to support pro-gambling legislation.	*State v. Walker*, 185 Ariz. 228, 231, 235, (Ct. App. 1995).
5.	Nearly ten percent of the members of the state legislature were indicted.	Sandhu Decl. Ex. A (Maricopa County Superior Court Docket, CR 1991-000997), Ex. B (L. Feldman, *Indictment of Lawmakers Another Blow to Arizona*, Los Angeles Times, Feb. 9, 1991, at 1).
6.	Twenty-three people, including legislators and lobbyists, were indicted as a result of the AzScam investigation.	*State v. Walker*, 185 Ariz. at 231 (Ct. App. 1995); Sandhu Decl. Ex. A ((Maricopa County Superior Court Docket, CR 1991-000997).

7.	A legislator was convicted on corruption-related charges as a result of the AzScam investigation.	*State v. Walker*, 185 Ariz. 228 (Az. Ct. App. 1995)
8.	The press reported that video clips from the AzScam investigation showed legislators stuffing tens of thousands of dollars into gym bags while making comments such as: • "I sold way too cheap." • "My favorite line is, 'What's in it for me?'" • "There's not an issue in this world I give a [expletive] about." • "We all have our prices." • "I like the good life, and I'm trying to position myself that I can live the good life and have more money."	*State v. Walker*, 185 Ariz. at 236; Sandhu Decl. Ex. F (*Excerpts from indictment tell tale of political deals*, Arizona Daily Star, Feb. 10, 1991), Ex. G (Mary K. Reinhart, *Videotapes show payoffs: Ariz. legislators, lobbyists appear at sting meetings*, Arizona Daily Star, Feb. 8, 1991), Ex. B (L. Feldman, *Indictment of Lawmakers Another Blow to Arizona*, Los Angeles Times, Feb. 9, 1991, at 1) Ex. H (Sally Ann Stewart, *New Tarnish on Arizona's Image. Bribe Case has State 'In Shock,' USA Today*, Feb. 13, 1991, at 6A);

9.	The AzScam scandal received local, state, and national media coverage.	Sandhu Decl. Exs. B, F-H [collected news articles], Ex. D (Aja Dep. 36: 5-13); Ex. C (Smoldon Dep. 46: 25, 47: 1-4); Ex. E (Symington Dep. 99: 18-19).
10.	Media reports about AzScam included quotes from lobbyists, former state legislators, and present legislators about the harmful effects of the AzScam scandal on public trust in state government.	Sandhu Decl. Ex. I (Mary K. Reinhart, *AzScam fallout is far from over, politicians say*, Arizona Daily Star, June 24, 1991), Ex. J (John Woestendiek, *For Arizona, The Scandals Just Keep on Coming*, Philadelphia Inquirer, Feb. 25, 1991 at A2), Ex. K (Seth Mydans, *Civics 101 on Tape in Arizona, Or 'We All Have Our Prices,'* N.Y. Times, Feb. 11, 1991), Ex. L (Steve Yozwiak, *Survey says opinions vary on state ethics; 2nd 'AzScam' is 'probable,'* The Arizona Republic, Oct. 5, 1991 at B1, B4).
11.	Arizona lobbyist Russell Smoldon testified that he was "not surprised" when news of the AzScam scandal broke because some of the legislators involved were on "shaky ground."	Sandhu Decl. Ex. C (Smoldon Dep. 45: 23-25, 46: 1-17).

12.	As part of a series called "The Invisible Legislature," the *Arizona Republic* printed a December 14, 1997 article in which it reported that: "Reforms passed by voters in 1986 were supposed to prevent the practice known as bundling contributions, but candidates and lobbyists have found a loophole in the law. Bundling occurs when an individual collects a number of checks from individuals and then presents them to one candidate. Lawmakers get around that prohibition by appointing lobbyists to their campaign finance committees, a role that allows them to gather checks from others." The article also reported that at a fundraising luncheon for the Arizona Speaker of the House, 45 of 55 fundraising committee members were registered lobbyists, and most of those lobbyists	Sandhu Decl. Ex. O (Michael Murphy, *Holiday Premium on Fund-Raising*, The Arizona Republic, Dec. 14, 1997, at p. A1 (Bates-stamped CEI0005008-11)); *see also* Sandhu Decl. Ex. M (Jonathan Sidener & Kris Mayes, *Invisible Legislature: Dollars and Bills: Lobbyists' influence spreads far but often goes unrecorded*, The Arizona Republic, Jan. 21, 1996 at A1, A10-A11), Ex. N (Kris Mayes & Michael Murphy, *Invisible Legislature: Lobbyists bearing gifts solidify grip on Capitol*, The Arizona Republic, Dec. 22, 1996 at A1).

	were table sponsors selling ten tickets at $200 each, for a total of $2,000 in contributions.	
13.	In August 1998, the *Arizona Republic* reported that the State Senate's President assigned lobbyists to raise money for certain candidates and "warned the lobbyists that they will suffer political retribution in the next session of the Legislature if they raise money for Democrats."	Sandhu Decl. Ex. P (Chris Moeser, *Invisible Legislature: GOP drafts lobbyists for help in crucial races, Senate chief reputedly warns them not to raise funds for Democrats*, The Arizona Republic, Aug. 20, 1998 at A1, A2 (Bates-stamped CEI0005006-CEI0005007)).
14.	The passage of the Act was motivated in part by the widespread perception of corruption in Arizona state government.	Ariz. Rev. Stat. § 16-940(B); Sandhu Decl. Ex. Q (Hoffman Dep. 19:13-25, 20:1-9).
15.	In the 1998 Publicity Pamphlet for the Clean Elections Act initiative, one supporter commented on Arizona's "reputation of a state rife with corruption and abuse of money in politics."	Declaration of Tanja K. Shipman in Support of Defendants' Opposition To Plaintiffs' Motion For Temporary Restraining Order (docket no. 24) at Ex. 1.

16. A national media article stated that "[i]f there were ever a state ripe for campaign finance reform it is Arizona, whose government oozes with corruption and scandal."	Declaration of Tanja K. Shipman in Support of Defendants' Response to Plaintiffs' and Plaintiff-Intervenors' Motions For Preliminary Injunction (docket no. 125) at Ex. 1 ("Arizona's clean-money fight," 98 Nation 19 (1998))
17. Another national media article observed that "Arizona politics has been racked by one money scandal after another: state legislators indicted for bribery and racketeering, two U.S. senators among the in famous Keating Five, a governor driven from office for fraud."	Declaration of Tanja K. Shipman in Support of Defendants' Response to Plaintiffs' and Plaintiff-Intervenors' Motions For Preliminary Injunction (docket no. 125) at Ex. 2 (*High Cost of Reform*, U.S.A. Today, Oct. 22, 1998).
18. Since the 2000 election, when the Act went into effect, there has been a 20% increase in the number of contested state Senate races.	Report of Dr. Kenneth Mayer attached to his declaration in support of Defendant's opposition to the preliminary injunction motion ("Mayer Report") (docket no. 1333, filed 09/23/2008) at 7; Sandhu Decl. Ex. S (Querard Dep. 39:10-15; 40:5-18).

19.	Since the 2000 election, there has been a 300% increase in the number of competitive state Senate races.	Mayer Report at 7.
20.	Plaintiffs consist of consist of four incumbents, the State Treasurer who previously served as a State Senator, one first time 2008 challenger, and two political action committees.	Shipman Decl. Ex 4 [Plaintiff-Intervenors' Objections and Responses to Defendants' First Request For Admissions and Second Request For Production at 2 (response to RFA 8 re: Murphy), 3 (response to RFA 24 re: Burns)], Ex 5 [Plaintiffs' Collective Response to Defendants' First Set of Requests For Admission and Second Set of Requests For Production at 7 (response to RFA 10 re:McComish), 8-9 (response to RFA 13 re: McComish), 11 (response to RFA 19 re: McLain), 12 (response to RFA 22 re: McLain)]; Ex. 6 (Bouie Depo. at 5:19 – 6:3, 7:12-16); Ex. 7 (Martin Depo. 24:14-18). Plaintiff-Intervenors' Complaint in Intervention [Dkt 58] at ¶¶ 8, 11, 12.

21. Plaintiff Murphy was initially elected using Clean Elections Funds.	Sandhu Decl. Ex. S (Querard Dep. 78:23-79:25); Shipman Decl. Ex. 4 [Plaintiff-Intervenors' Objections and Responses to Defendants' First Request For Admissions and Second Request For Production at 1 (*see* responses to RFAs 1 & 2)].
22. A trigger report is a one-page form that is electronically filed with the Secretary and which indicates merely the identity of the candidate committee, the filing date and reporting period, and the total amount of the contributions or expenditures.	Declaration of Todd F. Lang in Support of Defendants' Motion for Summary Judgment ("Lang Decl.") at ¶ 11 & Ex. 5 (Bob Burns' October 14, 2008 trigger report).
23. Plaintiff-Intervenor Robert Burns triggered matching funds in the 2002, 2004, and 2006 election cycles.	Sandhu Decl. Exs. V-X (Citizen Clean Elections Commission disbursement data).
24. When asked whether he triggered matching funds for his opponent in the 2004, and 2006 election cycles, Burns stated, "I don't believe I	Sandhu Decl. Ex. U (Burns Dep. 32:12-23, 50:25-51:1-6)

	did," and when told his primary opponents in 2002 received matching funds, he stated, "I'm surprised at the amount. I wasn't aware that that – that they received that amount of money. . . ."	
25.	Robert Burns testified at deposition that he could not say that he had reduced the number of mailers he had sent out to voters since the enactment of the Clean Elections Act.	Sandhu Decl. Ex. U (Burns Dep. 101:13-17, 101:13-103:9).
26.	Dean Martin has run as a traditional candidate in each of his four prior campaigns.	Sandhu Decl. Exs. Z-CC (Campaign Finance Reports).
27.	Dean Martin could not recall at deposition if he had triggered matching funds in any of his prior campaigns.	Sandhu Decl. Ex. R (Martin Dep. 28: 1-4).
28.	Dean Martin has not been coerced into running as a participating candidate in any of his four prior campaigns.	Sandhu Decl. Exs. Z-CC (Campaign Finance Reports).

29. The elimination of matching funds from the Act would not make any difference in Dean Martin's decision as to whether to run as a participating candidate in 2010.	Sandhu Decl. Ex. R (Martin Dep. 36:4-7).
30. All Plaintiff candidates except Tony Bouie won their 2008 election campaigns.	Lang Decl. Ex. 4 (2008 Arizona Official Election Canvas).
31. Three of the four incumbent Plaintiffs received public funding under the Act during election campaigns prior to 2008.	Shipman Decl. Ex. 4 (Plaintiff-Intervenors' Objections and Responses to Defendants' First Request For Admissions and Second Request For Production at 1 (*see* responses to RFAs 1 & 2 re: Murphy)), Ex. 8 (McLain Depo. 14:1-3); Ex. 9 (McComish Depo. 9:1-3).
32. Because of Clean Elections funding, Meg Burton Cahill was able to successfully run for the state legislature against two powerful incumbents.	Sandhu Decl. Ex. T (Burton Cahill Decl. ¶ 3 in support of Defendant-Intervenors' Opposition to Motions for Preliminary Injunction (docket no. 121, filed 9/23/2008)).

33. The availability of matching funds was a "critical factor" in Meg Burton Cahill's decision to run as a participating candidate.	Burton Cahill Decl. ¶ 5.
34. Without matching funds, the state would have to either: (1) give participating candidates higher initial grant amounts, which would waste public funds and threaten the public legitimacy of the program; or (2) leave initial grant amounts at current levels, which would, in the absence of matching funds, result in reduced participation rates due to the increased risk of being outspent.	Sandhu Decl. Ex. Q (Hoffman Dep. 43:12-25; 38:23-43:25).
35. The Act has enabled candidates to run for office.	Sandhu Decl. Ex. S (Querard Dep. 39:10-15; 40:5-18); Ex. T (Burton Cahill Decl. ¶3); Declaration of Paula Forster in Support of Defendants' Response in Opposition to Plaintiffs' And Plaintiff-Intervenors' Motions For Preliminary Injunction at ¶¶ 3, 6 (docket no. 128,

		filed 9/23/2008); Declaration of Tammie Pursley in Support of Defendants' Response in Opposition to Plaintiffs' And Plaintiff-Intervenors' Motions For Preliminary Injunction at ¶¶ 3, 4, 8 (docket no. 134, filed 9/23/2008); Declaration of David Scapira at ¶ 7 (docket no. 135, filed 9/23/2008); Declaration of Pamela Durbin in Support of Defendants' Response in Opposition to Plaintiffs' And Plaintiff-Intervenors' Motions For Preliminary Injunction at ¶ 3 (docket no. 137, filed 9/23/2008); Declaration of Jorge Garcia in Support of Defendants' Response in Opposition to Plaintiffs' And Plaintiff-Intervenors' Motions For Preliminary Injunction at ¶ 3 (docket no. 139, filed 9/23/2008).
36.	Rick Murphy could not have successfully run for office in 2004 without Clean Elections Act funding.	Sandhu Decl. Ex. S (Querard Dep. 78:23-79:25).

37.	In 1998 (before the Act went into effect) 177 legislative candidates spent a total of $1,333,999 (in 2006 dollars); by 2006, 206 legislative candidates spent a total of $6,487,133.	Green Decl. Ex. A at 19.
38.	Average inflation-adjusted spending among the top ten percent highest-spending candidates increased between 1998 and 2006 from $34,622 to $42,162 in the general elections and from $51,279 to $61,395 in the primary elections.	Green Decl. Ex. A at 14.
39.	In 1998, political entities made $29,746.85 in independent expenditures ($36,791.20 in 2006 dollars, adjusted for inflation), and in 2006, independent expenditures totaled $1,262,976.95.	Migally Decl. ¶¶ 7-8.
40.	Of the forty-six nonparticipating candidates who faced a participating opponent in 2006 and who could trigger	Green Decl. Ex. A at 14.

	matching funds by spending more than $17,918, one spent between $15,000 and $26,000. Thirty-nine candidates spent less than $15,000 and 6 candidates spent more than $26,000.	
41.	It is more difficult for challengers to raise money than it is for incumbents.	Sandhu Decl. Ex. R (Martin Dep. at 43:4-44:5).
42.	The participation rate for Arizona candidates in the Clean Election Act for the 2008 general election was 67% and, of that group, 44% won their seats.	Lang Decl. at ¶¶ 8, 10 & Exs.2-4.
43.	Candidate participation in the program for general elections has been between 52% and 67% since the 2002 election cycle. In 2008, one in three candidates chose private funding.	Lang Decl. at ¶¶ 5-9 & Exs.1, 2; Sandhu Decl. Ex. Y (Citizens Clean Elections Commission 2008 Annual Report).
44.	Matching funds have influenced candidates' decision to accept public funding.	Sandhu Decl. Ex. T (Burton Cahill Decl. ¶ 5; *see also* Declaration of Tammie Pursely in Support of Defendant's

		Response in Opposition to Plaintiff and Plaintiff-Intervenor's Motion for Preliminary Injunction at ¶¶ 4, 8 (docket no. 134, filed 9/23/2008); Declaration of David Schapira in Support of Defendant's Response in Opposition to Plaintiff and Plaintiff-Intervenor's Motion for Preliminary Injunction at ¶¶3-8 (docket no. 135, filed 9/23/2008); Declaration of Ed Ableser in Support of Defendant's Response in Opposition to Plaintiff and Plaintiff-Intervenor's Motion for Preliminary Injunction ¶¶8-14 (docket no. 136, filed 9/23/2008); Declaration of Pamela Durbin in Support of Defendant's Response in Opposition to Plaintiff and Plaintiff-Intervenor's Motion for Preliminary Injunction ¶¶4-5 (docket no. 137, filed 9/23/2008)).
45.	Absent matching funds, participation rates would decline.	Mayer Report at 8; Querard Dep. 32: 2-24; *see also* Declaration of Ed Ableser in Support of

		Defendants' Response in Opposition to Plaintiffs' And Plaintiff-Intervenors' Motions For Preliminary Injunction at ¶ 8 (docket no. 136, filed 9/23/2008); Declaration of David Schapira in Support of Defendant's Response in Opposition to Plaintiff and Plaintiff-Intervenor's Motion for Preliminary Injunction at ¶ 7 (docket no. 135, filed 9/23/2008).
46.	The Clean Elections program funded at least one candidate in 429 races for statewide and legislative office, including 222 primary election races and 207 general election races, since 2000.	Migally Decl. ¶ 12.

BRADLEY S. PHILLIPS (*pro hac vice*)
Brad.Phillips@mto.com
GRANT A. DAVIS-DENNY (*pro hac vice*)
Grant.Davis-Denny@mto.com
ELISABETH J. NEUBAUER (*pro hac vice*)
Elisabeth.Neubauer@mto.com
PUNEET K. SANDHU (*pro hac vice*)
Puneet.Sandhu@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

MONICA YOUN (*pro hac vice*)
monica.youn@nyu.edu
ANGELA MIGALLY (*pro hac vice*)
angela.migally@nyu.edu
THE BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Telephone: (212) 992-8158
Facsimile: (212) 995-4550

TIMOTHY M. HOGAN (004567)
ARIZONA CENTER FOR LAW IN
THE PUBLIC INTEREST
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004
Telephone: (602) 258-8850

Attorneys for Defendant-Intervenor
CLEAN ELECTIONS INSTITUTE, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, et al., Plaintiffs, and DEAN MARTIN, et al., Plaintiff-Intervenors, vs. KEN BENNETT, et al., Defendants, and CLEAN ELECTIONS INSTITUTE, INC. Defendant-Intervenor.	CASE NO. CV-08-1550-PHX-ROS (Assigned to the Honorable Roslyn O. Silver) **DECLARATION OF DONALD GREEN IN SUPPORT OF DEFENDANT-INTERVENOR CLEAN ELECTIONS INSTITUTE, INC.'S MOTION FOR SUMMARY JUDGMENT** (Filed Jun. 12, 2009)

I, Donald P. Green, declare as follows:

1. I submit this declaration in support of Defendant-Intervenor's Motion for Summary Judgment. I have been retained by Defendant-Intervenor to provide my opinions to the Court, including those set forth in this affidavit. I have personal knowledge of the matters set forth here, except as I am being compensated for my services in this action at a rate of $250 per hour.

2. I have spent my entire professional career studying, writing, teaching and lecturing about American politics and the American election system

in particular. I am the A. Whitney Griswold Professor of Political Science at Yale University. In addition, I serve as the director of the Yale Institution for Social and Policy Studies, an interdisciplinary policy center. I am currently serving my fifth consecutive three-year term as Director.

3. I received my doctorate in political science from University of California, Berkeley in 1988. My area of expertise lies in campaigns, elections, research design and statistical analysis. I regularly teach undergraduate and graduate courses in these areas.

4. I also have published extensively on, among other things, the topics of campaigns and elections in leading political science journals such as the *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *Electoral Studies*, *Political Research Quarterly*, and *Political Analysis*. Several of my publications focus on campaign finance and use statistical models to estimate the effects of campaign spending. I also co-authored a book entitled *Get Out The Vote: How to Increase Voter Turnout* (Brookings Institution Press, 2008), which reports the results of more than one hundred studies of political campaigns and voter mobilization drives.

5. In 2005, I was elected to the Council of the American Political Science Association. I currently serve on the Board of Overseers of the American National Election Study. My scholarship has won recognition from the National Science Foundation and substantial financial support from James Irvine

Foundation, Pew Charitable Trusts, Smith Richardson Foundation, Harry Frank Guggenheim Foundation, and Russell Sage Foundation. In 2004, I was elected Fellow of the American Academy of Arts and Sciences.

6. At issue in this litigation are, I understand, assertions that the matching fund provisions of the Arizona Clean Elections Act discourage nonparticipating candidates from making expenditures beyond the matching funds threshold. However, data regarding candidate expenditures in legislative races in Arizona before and after the enactment of the Citizens Clean Elections Act demonstrates that nonparticipating candidates under the current system spend at levels that equal or exceed those observed before the introduction of matching funds.

7. I examined patterns of spending by nonparticipating candidates in 2006 who were opposed in the general election by at least one participating opponent. I observed that spending levels do not cluster at or around the matching funds threshold, as one would expect if nonparticipating candidates were deterred from spending past that threshold. Looking at the smooth distribution of these nonparticipating candidates' expenditures, one would not guess that the matching fund threshold was $17,918, because there is no tendency for spending to cluster at or around this figure.

8. Of the 46 nonparticipating candidates facing a participating opponent in the general election in

2006, 39 spent less than $15,000 and therefore never reached the matching threshold, although one candidate, Pete Hershberger, spent $12,415 and was subject to a reduced threshold of $11,945. Just one candidate subject to the $17,918 threshold spent between $15,000 and $26,000. The remaining 6 candidates spent between $26,000 and $149,000.

* * *

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,

Plaintiffs,

and

DEAN MARTIN, *et al.*,

Plaintiff-Intervenors

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, *et al.*,

Defendants,

and

Civil Action No. 08-1550-PHX-ROS

PLAINTIFF-INTERVENORS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

(Filed Jun. 12, 2009)

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[1] Admitted *pro hac vice*.

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

* * *

67. In the 2008 general election campaign, Burns' publicly funded opponent received $17,707.44 in candidate equalization disbursements and $10,543.98 in independent expenditure disbursements, in addition to the $19,382.00 initial general election disbursement, for a total public subsidy of $47,633.42 – which means that Burns' publicly funded opponent had $7,263.42 more than Burns to run her campaign. Ex. 34, Jan. 20, 2009, Disc. Resps. 6.

* * *

U.S. District Court for the District of Arizona

(Filed Jun. 13, 2009)

[Title Omitted In Printing]

[Some Columns Omitted In Printing]

TITLE OF DOCUMENT	AUTHOR & PUBLISHER	DATE	SUBSTANCE
Commission's Final Decision in the Matter of Matt Salmon (No.: 03A-02036-CCE)	CCEC	6/30/03	"[Opposing clean elections candidates may not have received equalization monies in time to fully benefit their campaigns. For example, a nonparticipating candidate could delay filing until near the end of an election period to prevent clean elections opponent from receiving timely equalization monies."
CCEC: Statement of Reasons of Executive Director, MUR: No. 06-0022	Executive Director o CCEC	10/23/06	Executive Director of Citizens Clean Elections Commission finding allegation that candidate for office failed to report expenditures for t-shirts in violation of Clean Elections Act "are supported by the Complaint and the Response provided by the Respondent."
CCEC Statement of Reasons of Executive Director, MUR No. 06-0047	Executive Director o CCEC	2/28/08	Citizens Clean Elections Commission finding that candidate for office failed to report expenditures.
Settlement Agreement in the Matter of Clancy Jayne, Case No. MUR 04-0011	CCEC	8/6/04	Clean Elections Commission finding that candidate did not file an original campaign finance report when the campaign's expenditures exceeded the triggering amount, but that the violation was unintentional.
Gould pays $1,000 to settle dispute with Clean Elections	Caleb Soptelean, *Kingman Daily Miner*	7/26/05	News article relating to traditional candidate paying a $1,000 penalty for untimely Clean Elections reporting.
Clean Elections Commission Stmt. Of Reasons of Exec. Dir. Re MUR No. 02-0008	Executive Director o CCEC	8/13/02	Finding that candidate failed to timely file campaign finance reports specifically related to expenditures.

Clean Elections Commission Stmt. of Reasons of Exec. Dir. Re MUR No. 02-0009	Executive Director of CCEC	8/13/02	Finding that candidate failed to file a timely expenditure report.
Gould pays $1,000 Clean Elections Settlement	Caleb Soptelean, *Today's News Herald*	6/8/05	News article relating to traditional candidate paying a $1,000 penalty for untimely Clean Elections reporting.
CCEC Probable Cause Recommendation Revised re CCEC MUR #06-0015	Executive Director of CCEC	9/26/06	Finding that traditional candidate's expenditures exceeded the triggering amount but failed to comply with reporting requirements.
CCEC Statement of Reasons of Executive Director MUR No. 06-0014	Executive Director of CCEC	9/6/06	Finding that traditional candidate failed to report expenditures which exceeded the triggering amount.
Karlstrom Letter Re: CCEC	Florence Kalstrom	10/21/2004	"I write today to express my concern that a candidate in my district is not following the reporting requirements of the clean elections law."

* * *

Candidates against public cash, but take it anyway	Le Templar	7/16/04	"But Allen said existing law and supporting rules written by the Arizona citizens Clean Elections Commission make traditional fund raising nearly impossible."
Payton allegations	CCEC	No Date	"Failure to file a contribution report in a timely manner. Failure to file a supplemental contribution report in a timely manner."
Osterloh Letter Re: CCEC	Mark Osterloh	12/12/00	"I believe Ms. Hellon conspired with the Republican Party, her campaign treasurer, and possibly others, to purchase media (radio or television) and printed literature and reported delayed purchase dates of November 3rd and 6th. I allege the actual "expenditures" occurred at much earlier times and the report was delayed to prevent my receiving matching funds."

Somers CCEC	CCEC	No Date	"Failure to file a contribution report in a timely manner. Failure to file a supplemental contribution report in a timely manner."
CCEC Statement of Reasons of Executive Director MUR #06-0015	Executive Director of CCEC	9/5/06	"Respondent reached the original report triggering level on June 18, 2005. Although the Respondent's first report was due by January 1, 2006, Respondent did not report these expenditures until January 25, 2006. Therefore, Respondent was 24 days late filing $9,077.24 of expenditures previously unreported."
CCEC Statement of Reasons of Executive Director MUR #06-0014	Executive Director of CCEC	9/5/06	". . . Respondent was 7 days late filing $7,183.32 of expenditures previously unreported, delaying the disbursement of matching funds to his participating opponent in violation of A.R.S. § 16-958(A)."

* * *

CCEC Memorandum Re: Possible Independent Expenditure	Executive Director of CCEC	9/6/06	"While I acknowledge that Goldwater has emphasized a border security plan detailed and described in the poll, and while I respect that he would not wish to be associated with a poll that voters might deem offensive, I am not persuaded that these considerations elevate phone calls to express advocacy against the Goldwater campaign. The question referencing Goldwater is not clearly calibrated to influence recipients of the phone calls to support or oppose the Goldwater candidacy, but seems geared to gauge support for a policy position he has unequivocally adopted. By contrast, I believe that the questions regarding Munsil were clearly calibrated to influence recipients of the phone calls to oppose his candidacy. In particular, the question asking whether it would influence a recipient's vote to know that Munsil had an illegitimate child appears a thinly veiled effort to cast Munsil in a negative light and to advocate his defeat."

* * *

Letter of Lewis and Roca to Members of CCEC	Scott Rules	4/26/02	"Section III. Union Letters Urging Members to Make $5 Qualifying Contributions. The third section . . . Concerns letters sent by leaders of the UFCW and [AFSCME]. These letters expressed support of Janet Napolitano as a candidate for Governor and urged members to make $5 qualifying contributions. Mr. Mays alleges that these letters violate the Citizens Clean Election Act or the Commissions' rules because the labor unions were improperly acting as solicitors for Janet Napolitano and there was no 'proper accounting' of the expenses for these mailings."
Letter of Clancy Jayne to Colleen Connor	Clancy Jayne	11/15/04	"[The] Executive Director of Arizona Right to Life [ ] is quoted in the *Arizona Capitol Time* on August 13, 2004, admitting to mailing a letter on behalf of Ms. Gorman soliciting $5.00 qualifying contributions. The news article reported [the Executive Director] stated that while he did indeed write the fund raising letters for Mr. Carpenter and Ms. Gorman, their respective campaigns, not his organization, paid for the printing and mailing."
Response of Arizona Republican Party and Nathan Sproull to Subpoena Duces Tecum	Nathan Sproull	9/5/00	"[The] Executive Director of the Arizona Republican Party, being first duly sworn, deposes and says that. . . . [He] wanted to ensure that Kaminsky [a Republican candidate for the Arizona State Senate] received as many qualifying contributions as possible. . . . In addition to soliciting qualifying contributions for Pat Kaminsky by telephone or at various Republican Party events, he solicited qualifying contributions by mail."
CCEC Statement of Reasons of Executive Director MUR: NO 02 001 and 02 002	Executive Director of CCEC	5/15/02	". . . Richard Mays filed a complaint with the Citizens Clean Elections Commission, alleging that Janet Napolitano, a candidate for governor, had violated three provisions (Allegations 1-3) of the Citizens Clean Elections Act."

Re: Citizens Clean Elections Act Violations Committed by Janet Napolitano	Richard Mays	4/24/02	" I believe Napolitano has violated or will violate the Act on an additional theory of the law. Specifically, Napolitano has already exceeded the maximum contribution."
CCEC Letter	Steven Rasmussen	5/1/02	" I submit this complaint concerned that the basic purpose of the law will be irretrievably subverted if candidates are permitted to organize and orchestrate special interest groups to finance and collect their five-dollar contribution. The definition of independent expenditures must be strict. . . "
First Amended Complaint – In the matter of Pat Kaminsky	David Eagle	9/14/00	"Beginning on or about August 1, 2000, the Arizona Republican Party and Sproul, for the benefit of Kaminsky, mailed to 2400 voters of all party memberships resident in District 25 a mailing which included a letter, a CCEC contributor form and postage pre-paid return envelope. One insert, a letter signed by Trent Franks, expressly advocated the election of Kaminsky and the defeat of his opponent and urged recipients to make a $5.00 Clean contribution to Kaminsky and return a signed CCEC contributor form to the Arizona Republican Party at its state headquarters address."
Rasmussen Letter re. CCEC	Steven Rasmussen	4/30/02	"Dear Commission Members. As someone who circulated the initiative petition for Clean Elections, I submit this complaint concerned that the basic purpose of the law will be irretrievably subverted if candidates are permitted to organize and orchestrate special interest groups to finance and collect their five-dollar contributions. The definition of 'independent expenditures' must be strict – no contact and no coordination – or this law becomes a special interest shell game with the public asked to foot the bill."

Motion for Rehearing or Review In the Matter of David Burnell Smith	David Burnell Smith	9/23/05	"The Commission let all of these elected officials off with minor monetary penalties, or with no fines at all, as was the case with Janet Napolitano. The Commission did not seek to impose major monetary penalties or forfeiture of office as a penalty against any of these successfully elected state officials, although it did so against Smith."
Effort to gut Clean Elections ignores the choice by voters	Executive Director of CCEC	9/11/05	"Recognizing a desire to remove special interest money from Arizona politics and to level the playing field in campaign financing, voters approved the ballot initiative establishing the Citizens Clean Elections Commission in 1998."
Equalization Calculations [CD]	CCEC	8/23/04	Equalization was stated 585 times within the calculations sheets located on CD ROM. On each election equalization calculation there were differences in: date, name, house district number, senate district number, filer ID number, and vendor number
Equalization Calculations [CD]	CCEC	10/31/02	Equalization was stated 127 times within the calculation sheets located on CD ROM. On each election equalization calculation there were differences in: titles, names of non participating candidates, names of participating candidates, filer ID #, equalization number totals, and dates
Equalization Calculations [CD]	CCEC	1/1/04	Equalization was stated 585 times within the calculation sheets located on CD ROM. On each election equalization calculation there were differences in: number of participating candidates, vendor numbers, filer ID #, number of non participating candidates, district numbers, dates and titles

Citizens Clean Elections Commission – Recommendations of External Investigative Consultant	Gene Lemon	1/19/06	"The complaint originally filed on August 31, 2005, alleged that Respondent violated R2-703(A)(3) by purchasing fixed assets with a value in excess of $600.00.
Settlement Agreement	Colleen Conlon	3/18/05	"Specifically, the Commission finds that Respondent received in-kind family contributions (and by operation of law made in-kind expenditures) in excess of the permissible limit and after the end of the qualifying period."
Internally Generated Complaint	Gene Lemon	6/22/05	"Based on the Candidate's campaign finance reports, it appears that the Candidate is in violation of A.R.S. Sec 16-953(A), (B), (C). Return of monies to the Citizens Clean Elections fund and should promptly remit to the Commission the sum of $6,490.45."
Settlement Agreement	Executive Director of CCEC	12/13/05	"The complaint alleges that four reimbursements to family members and individuals for campaign expenses had exceeded the individual and personal contribution limits."
Citizens Clean Elections Commission – Statement of Reasons of External Investigative Consultant	Gene Lemon	10/28/05	"... A participating candidate for State Representative, District 20, violated the Act by failing to identify on his campaign finance reports the full name and street address of persons providing goods and services to his campaign."
Citizens Clean Election Commission – Statement of Reasons of External Investigative Consultant	Gene Lemon	8/17/05	"... Meyers ("Complainant") filed a complaint against Carole Hubbs ("Respondent"), a participating candidate for State Representative, District 4, alleging that Respondent (i) failed to pay the vendor directly for goods and services and properly report those payments, and (ii) accepted an unreported in-kind contribution from another candidate who shared a voter list with Respondent in violation of the Act."
Patrick Meyers Letter	Patrick Meyers	5/5/05	"In order to apply the new standards as set out by the Clean Elections Commission and its staff equally to all candidates, I continue to review campaign finance reports and I continue to find numerous violations." (Exemplar Doc.)

Carol Vanderecook Letter re: Complaint Against Doug Quelland	Carol Vanderecook	11/12/08	"This is a formal request for the Secretary of State (the "Secretary") and the Citizens Clean Elections Commission (the "Commission") to investigate Dough Quelland for entering into a $15,000.00 consultant agreement with Intermedia Public Relations ("IMPR") in violation of Article I and Article II of Arizona's campaign finance law."
CCEC Statement of Reasons of Executive Director MUR #06-0005	Executive Director of CCEC	1/7/09	" Chairman of the Arizona Democratic Party Filed a complaint against Len Munsil A participating candidate for governor, alleging possible violations of Arizona election law, specifically that the Respondent failed to report the receipt of in-kind contributions, or alternatively, incurred expenses in excess of the available cash on hand.
Defendant's motion to dismiss Smith v. CCEC	Diana Varella	10/20/05	"Pursuant to A.R.S. § 16-942 and -957, and A.A.C. R2-20-215 and A.A.C. R2-20-217, the Commission issued a written order on March 25, 2005 requiring Smith (1) to pay a civil penalty of $10,000 to the Commission; (2) to forfeit his office of State Representative for District 7; and (3) to repay to the Citizens Clean Elections Fund the amount of $34,625.09.

. . .

Conciliation Agreement in the Matter of Charlene Pesquiera	Executive Director of CCEC and Charlene Pesquiera	1/17/08	" . . . Respondent made expenditures in excess of the threshold set forth in A.R.S. § 16-941(C)(2). Respondent was therefore required to file a supplemental campaign finance report on or before November 6, 2006. Respondent failed to declare such expenditures until December 6, 2006, a date 30 days after the due date for filing a supplemental campaign finance report."

. . .

Andrew Gordon Letter re: Janet Napolitano	Andrew Gordon	9/25/06	"... The complaint appears to claim that the Napolitano campaign coordinated with two independent campaign committees, Arizona Conservative Trust ("ACT") and Arizona Values Coalition ("AVC") and Benu Memory and Seamus Perry."
CCEC Statement of Reasons of Executive Director MUR #06-0027	Executive Director of CCEC	11/22/06	"The Complaint alleges that Respondent made a series of campaign related trips without disclosing expenditures for the costs of such trips."
CCEC Statement of Reasons of Executive Director MUR NO 02-0047	Executive Director of CCEC	10/3/02	"The Complaint alleges that the Respondent violated A.R.S. § 16-904 AND 16-915 for failing to disclose the nature of the petty cash disbursements.
Patrick Meyers Letter	Patrick Meyers	3/2/05	"I noticed that Clean Elections has initiated, on its own, several investigations into such behavior, but only against conservative Republican candidates. Given the impartiality required of your agency, I assumed that this was an oversight and that you intended to pursue everyone equally. However, several moths have passed and you have not done so."
		* * *	
CCEC Probable Cause Recommendation MUR #06-0001	Executive Director of CCEC	8/15/06	"... Reason to believe that Janet Napolitano ... a participating candidate for governor, by and through her campaign committee, Janet Napolitano 2006 ... may have committed violations of the citizens Clean Elections Act and Commission rules."
CCEC Probable Cause Recommendation MUR #06-0001	Executive Director of CCEC	8/15/06	Starting to campaign without having official monetary funds ..." On March 15, 2006 Respondent entered into a Letter of Agreement for Internet Consulting and Related Services with Vendor ... April 24, 2006 Respondent received public funding as a participating candidate."

Patrick Meyers Letter	Patrick Meyers	2/24/05	Repeat of Meyers Letter/ "I wish to file a formal complaint against Janet Napolitano for Governor – 2002 (2002-91776) I trust that you will pursue it with the same zeal and single-mindedness with which you have pursued the others.
		* * *	
Campaign contribution complaint dismissed against legislative candidate	Daniel Burnette	7/11/04	"Gilbert resident Garry Bae filed a complaint on May 10th alleging that a publicly funded candidate, Linda Wegener, a Tempe Republican running for the House in District 20, had exceeded the early contribution limit of $3,340 by $1,360."
		* * *	
More dirt on clean elections	No Author	7/29/04	"First, there's the news, curiously underreported south of the Gila River, that onetime Libertarian candidate Yuri Downing was indicated for theft, fraud, and perjury for his 2002 publicly funded campaign for the Arizona Legislature. . . . Fun lovin' Yuri . . . got a couple of his buddies together to run a Libertarian slate of candidates for the House and Senate. The trio had a good ol' time blowing about $100,000 while campaigning in Tempe and Scottsdale hot spots and nightclubs. . . . The political consultant spearheading the effort to flush Clean Elections by blocking the use of public funds for campaigns calls the case 'Exhibit A in why tax-payer-funded elections are a bad idea. Here you had three people who ran for no other reason than having a three-month-long party.'"

Losing candidate probed over signatures to qualify for public funding	Daniel Burnette	9/10/04	"A defeated Democratic candidate for the House in District 28 is being investigated for allegedly forging signatures on forms to qualify for public campaign money. . . . The investigation grew out of suspicions in the Arizona Secretary of State's office in August when Mr. Lawrence submitted 223 $5 contributions to qualify for up to $11,320 in public funding for the primary election."

* * *

Ex-candidate misses appeal	Le Templar	10/3/03	"Yuri Downing was the leader of three former roommates who campaigned last year as a team of Libertarians for legislative seats. The Clean Elections Commission ordered all three to repay the state after executive director Colleen Connor said they had spent thousands of dollars at Scottsdale nightclubs, vehicle rentals and personal office equipment."
Ex-Deputy Director files suit against clean elections panel	Howard Fischer	8/28/03	"The former deputy director of the Citizens Clean Elections Commission filed suit against the commission Wednesday, claiming he was fired for complaining that politics was driving an investigation into the finances of gubernatorial candidate Matt Salmon."
Former Clean Elections official sues over firing	Daniel Burnette	8/29/03	"The former deputy director of the Citizens Clean Elections Commission has filed a lawsuit alleging that he was illegally fired for blowing the whistle on a politically motivated inquiry into the campaign finances of then-gubernatorial candidate Matt Salmon."

* * *

Salmon says $10,000 fine was effort to smear him	David Pittman	8/1/03	"A state investigator who studied the charge and ruled for the GOP candidates was fired. . . . A lawyer for Salmon said he will file suit against the commission alleging a $10,000 fine it imposed against the Republican candidate for governor was excessive, contrary to law and part of a smear campaign. In a second case, a former top commission official claims he was fired for exposing a politically motivated investigation of Salmon's campaign finances."
Clean Elections commission under fire for alleged dirty politics	No Author	4/8/07	"Shaffer and Casey charge that Frankhouser found a willing accomplice in Colleen Connor, the commission's executive director. . . . A report issued by the firm said Arizona's campaign finance laws are quite often confusing, even to accountants.' It also found no evidence to suggest the Salmon campaign deliberately delayed reporting campaign spending."

* * *

Consent agreement and mutual release of all claims – in the matter of DeDonati	Steven McFarlany	9/18/03	The Commission and Respondent agree that Respondent . . . violated the [Clean Elections] Act and the Rules. . . . Respondent made representations to the Commission that he was in compliance with the requirements of the Act and would operate his campaign and use the public funds in compliance with all requirements of the Act and Commission Rules; . . . Respondent, in fact, failed to fulfill the above-mentioned representations and failed to operate his campaign committee in complete compliance with the Act and Rules. . . ."
Arizona clean elections law	David Pittman	7/31/03	"A trio of defeated Phoenix-area legislative candidates spent thousands of dollars on alcohol, food, rental cars and entertainment expenses at trendy Scottsdale nightspots – and used Clean Elections money to do it."

It's all in the family – kinfolk often on candidates' payrolls	David Pittman	7/31/03	"Arizona political candidates have used thousands of dollars of public campaign money to hire family members."
Dirty tricks	John Dougherty	7/30/03	"Within days, the Mahoney campaign began using the [bogus] news accounts as the basis for television commercials. . . . Mahoney ran for governor as a clean-elections candidate and received more than $1.69 million in public funds for his campaign. He spent several hundred thousand dollars on the Colorado City TV ads in the last few weeks of the campaign."
Ex-candidate agrees to repay clean funds	No Author	9/17/03	"A former legislative candidate has admitted misusing public funding he got for his campaign and has agreed to repay the state about half the $31,000 he received."

* * *

A toast to questionable campaign expenditures	No Author	1/1/06	"In the last days of the 2004 election, [participating candidate Ed Ableser] got about $7,000 in Clean Elections matching funds on Election Day, obviously at a point where it was too late to spend them on campaign ads or anything else that might help him win. So what did Ableser do? Well, he could have given it back, but he wasn't required to. And he didn't. Instead, he threw a party for his campaign volunteers wherein he rented a $287 'frozen drink' machine and reimbursed his dad $1,118 for food and drink expenses. Absleser also took one of his campaign volunteers and suddenly made her a paid consultant, handing over $3,628."
Coleen Connor letter CCEC	Emily Talmege	6/27/02	"I am writing to file a complaint involving the abuse and misuse of Clean Elections funding. [Describes story] . . . I believe this is a slap in the face to all Arizonans. . . . I would also suggest an audit of all the clean election forms that are signed for Carol Springer, since the ones I witnessed were being signed fraudulently."

* * *

Dirty Cash still flows	No Author	7/15/05	" . . . I do wish to take exception with the belief that Clean Elections has taken dirty money out of elections. In fact, some candidates participating in the public funding are still selling their souls to special interest groups to line up 'independent expenditures' (attack pieces from third parties). That public funding for the challenger's campaign, coupled with attacks on fiscally conservative incumbents by political action committees and other third-party committees, doesn't bode well for the 'clean elections' argument."

* * *

CCEC Probable Cause Recommendation MUR #06-0001	Executive Director of CCEC	8/15/06	"Following an investigation of the Respondent's campaign activities, I recommend that the Commission find probable cause that the Respondent violated the Act and assess a civil penalty of $500.00."
CCEC Statement of Reasons of Executive Director MUR #08-0026	Executive Director of CCEC	10/16/08	"On behalf of the Citizens Clean Elections Commission . . . , the Executive Director hereby provides the Statement of Reasons showing reason to believe that violations of the Citizens Clean Elections Act and or the Commission rules . . . may have occurred."
CCEC Statement of Reasons of Executive Director MUR #08-0021	Executive Director of CCEC	10/17/08	"Complainant alleges that Respondent accepted in-kind contributions from KFNX/Clear Channel Communications/ The Arizona Right Report 'Right Report' in the form of discounted rates for radio advertising spots."
CCEC Statement of Reasons of Executive Director MUR #08-0021	Executive Director of CCEC	10/17/08	Complainant alleges that Respondent violated A.A.C. R2-20-109(G) by claiming transportation expenses as expenditures in two cases. Complainant alleges that Respondent reimbursed himself for $350 in transportation expenses on September 2, 2008. Complainant also alleges that Respondent also improperly directly purchased gas for an individual on several dates in July.

* * *

CCEC internally generated complaint	Executive Director of CCEC	12/14/05	"During this time, Ableser violated A.R.S. [section] 16-945(B), where early contributions may only be raised and spent during the exploratory and qualifying period. . . . Respondent's campaign made a payment to Greg Ableser, Respondent's father, for 'reimbursement of food and drinks for a campaign volunteer party' in the amount of $1,118.22 on November 2, 2004. . . . On November 1, 2004, Respondent received matching funds in the amount of $528.34, but did not report either the receipt of the funds or how the funds were spent. . . ."

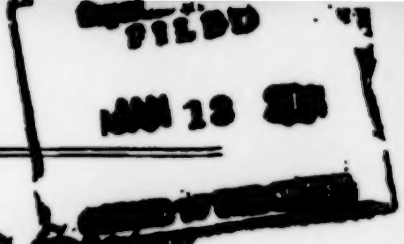
* * *

Settlement Agreement re Hernandez	Gene Lemon	11/1/05	"Respondent agrees to pay $1,190.66, which is the sum of the expenditures not reported on the amended campaign finance report and the amount remaining in his account at the end of the campaign, to the Citizens Clean Election Commission within 30 days of the date of the Settlement Agreement."
CCEC Statement of Reasons of Executive Director MUR #08-0004	Executive Director of CCEC	8/19/08	"Respondent admits that a total of $620.56 in expenditures were therefore not reimbursed within seven calendar days. This is a violation of A.A.C. R2-20-109(A)(3)(c)."

* * *

Response to CCEC MUR No 06-0014	Jason Williams	9/5/06	"Given your recent case with Governor Napolitano's reelection campaign committee, we would find it hard for you to justify any significant penalty. She committed a greater violation of the law and was not penalized at all."

Nos. 10-238, 10-239



In The Supreme Court of the United States

ARIZONA FREE ENTERPRISE CLUB'S FREEDOM CLUB PAC, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

JOHN MCCOMISH, et al.,

Petitioners,

v.

KEN BENNETT, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX, VOLUME 4, PAGES 895-1025

NICHOLAS C. DRANIAS*
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
ndranias@goldwaterinstitute.org
Counsel for Petitioners John McComish, et al.

WILLIAM R. MAURER*
INSTITUTE FOR JUSTICE
101 Yesler Way, Suite 603
Seattle, WA 98104
Tel: (206) 341-9300
Fax: (206) 341-9311
wmaurer@ij.org
Counsel for Petitioners Arizona Free Enterprise Club's Freedom Club PAC, et al.

MARY R. O'GRADY*
Solicitor General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Solicitor.General@azag.gov
Counsel for Respondents Ken Bennett, et al.

BRADLEY S. PHILLIPS*
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Brad.Phillips@mto.com
Counsel for Respondent Clean Elections Institute, Inc.

*Counsel of Record

[Additional Counsel Listed On Inside Front Cover]

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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

CLINT BOLICK
GOLDWATER INSTITUTE
SCHARF-NORTON CENTER FOR
CONSTITUTIONAL LITIGATION
500 East Coronado Road
Phoenix, AZ 85004
Tel: (602) 462-5000
Fax: (602) 256-7045
Additional Counsel for Petitioners
John McComish, et al.

WILLIAM H. MELLOR
STEVEN M. SIMPSON
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
wmellor@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY D. KELLER
PAUL V. AVELAR
INSTITUTE FOR JUSTICE
398 South Mill Avenue, Suite 301
Tempe, AZ 85281
Tel: (480) 557-8300
Fax: (480) 557-8305
tkeller@ij.org
pavelar@ij.org
Additional Counsel for Petitioners
Arizona Free Enterprise Club's Freedom Club PAC, et al.

TIMOTHY A. NELSON
Chief Deputy Attorney General
JAMES E. BARTON II
Assistant Attorney General
1275 West Washington
Phoenix, AZ 85007
Tel: (602) 542-3333
Fax: (602) 542-4085
Additional Counsel for Respondents
Ken Bennett, et al.

GRANT A. DAVIS-DENNY
ELISABETH J. NEUBAUER
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071
Tel: (213) 683-9100
Fax: (213) 687-3702
Additional Counsel for Respondent
Clean Elections Institute, Inc.

MONICA YOUN
MIMI MARZIANI
THE BRENNAN CENTER
FOR JUSTICE AT NYU
SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Tel: (212) 992-8158
Fax: (212) 995-4550
monica.youn@nyu.edu
Additional Counsel for Respondent
Clean Elections Institute, Inc.

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2008)

(Title Omitted In Printing)

Year	Office	Candidate	Party	Participate?	Total	Primary	General	Ran in general?	Traditional Candidate facing a Participating Candidate in Primary	Traditional Candidate Facing a Participating Candidate in General
2006	State Representative - District 1	ANDY TOBIN	Republican	Yes	$40,040.37	$30,110.54	$9,929.83	Yes		
2006	State Representative - District 1	BRYAN DETWILER	Republican	Yes	$16,946.19	$16,946.19	$0.00	No		
2006	State Representative - District 1	GEORGE SEAMAN	Other	Yes	$29,007.07	$10,272.49	$18,734.58	Yes		
2006	State Representative - District 1	LUCY MASON	Republican	Yes	$42,594.19	$30,619.07	$11,975.12	Yes		
2006	State Representative - District 1	NOEL CAMPBELL	Republican	Yes	$27,664.58	$27,664.58	$0.00	No		
2006	State Representative - District 1	WES EDMONDS	Democrat	Yes	$31,955.98	$19,502.94	$12,453.04	Yes		
2006	State Representative - District 10	DOUG QUILLARD	Republican	Yes	$68,679.00	$16,523.05	$52,155.95	Yes	p	p
2006	State Representative - District 10	JACKIE THRASHER	Democrat	Yes	$66,865.65	$27,185.24	$39,680.41	Yes	p	p
2006	State Representative - District 10	JIM WEIERS	Republican	No	$196,070.64	$47,119.13	$148,951.51	Yes	*	*
2006	State Representative - District 10	LAMONT LOVEJOY	Democrat	No	$2,019.49	$838.00	$1,181.49	Yes	*	*
2006	State Representative - District 11	ADAM DRIGGS	Republican	Yes	$33,153.92	$21,974.95	$11,178.97	Yes		
2006	State Representative - District 11	DEVIN SLAYTON	Republican	Yes	$20,647.58	$20,647.58	$0.00	No		

2006	State Representative – District 11	DOUG HESSELBROCK	Republican	Yes	$33,548.71	$22,266.85	$11,281.86	Yes		
2006	State Representative – District 11	JOHN ALLEN	Republican	Yes	$1,456.38	$1,456.38	$0.00	No		
2006	State Representative – District 11	MARK ANTHONY DESIMONE	Democrat	Yes	$32,681.65	$15,321.00	$17,360.65	Yes		
2006	State Representative – District 12	JERRY WEIERS	Republican	No	$2,385.94	$1,635.94	$750.00	Yes		
2006	State Representative – District 12	JOHN NELSON	Republican	No	$5,191.72	$2,984.72	$2,207.00	Yes		
2006	State Representative – District 13	MARTHA GARCIA	Democrat	No	$490.73	$62.69	$428.04	Yes		
2006	State Representative – District 13	STEVE GALLARDO	Democrat	no	$9,745.93	$3,232.31	$6,513.62	Yes		
2006	State Representative – District 14	CHAD CAMPBELL	Democrat	No	$24,149.06	$19,585.63	$4,563.43	Yes		
2006	State Representative – District 14	JOHN CARPENTER	Democrat	No	$3,751.82	$3,751.82	$0.00	No		
2006	State Representative – District 14	JOHN STEVENS	Republican	No	$1,106.98	$1,006.98	$150.00	Yes		
2006	State Representative – District 14	MIKE RENZULLI	Libertarian	no	$0.00	$0.00	$0.00	Yes		
2006	State Representative – District 14	ROBERT MEZA	Democrat	No	$40,945.67	$33,331.59	$7,614.08	Yes		
2006	State Representative – District 15	BOB GEAR	Republican	Yes	$32,678.00	$15,240.85	$17,437.15	Yes	p	p
2006	State Representative – District 15	DAVID LUJAN	Democrat	Yes	$34,519.47	$21,171.61	$13,347.86	Yes	p	p
2006	State Representative – District 15	KYRSTEN SINEMA	Democrat	Yes	$36,149.33	$21,548.86	$14,564.47	Yes	p	p
2006	State Representative – District 15	RICHARD E BUCK	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Representative – District 16	ROBERT YOUNG	Democrat	No	$16,722.36	$16,722.36	$0.00	No	-	

2006	State Representative - District 15	WILLIAM WHEAT	Republican	No	$4,126.40	$468.21	$3,680.19	Yes	*	*
2006	State Representative - District 16	BEN R MIRANDA	Democrat	Yes	$36,374.03	$24,492.91	$11,881.12	Yes	p	p
2006	State Representative - District 16	BETTY DOSS WARE	Democrat	Yes	$23,602.45	23,602.45	$0.00	No	p	
2006	State Representative - District 16	CARLOS AVELAR	Democrat	Yes	$19,123.00	$19,123.00	$0.00	No	p	
2006	State Representative - District 16	CLOVES CAMPBELL JR	Democrat	No	$8,655.84	$2,717.21	$5,938.63	Yes	*	*
2006	State Representative - District 16	DANIEL COLEMAN	Republican	No	$5,26[illegible]96	$4,940.11	$327.85	Yes	*	*
2006	State Representative - District 16	ROBERT MCPEEK	Republican	Yes	$13,940.00	$13,895.98	$84.02	No	p	
2006	State Representative - District 17	ANGIE C ROUSE	Democrat	Yes	$14,451.00	$14,451.00	$0.00	No		
2006	State Representative - District 17	CHRIS DEROSE	Republican	Yes	$15,412.00	$15,412.00	$0.00	No		
2006	State Representative - District 17	DALE DESPAIN	Republican	Yes	$42,866.66	$18,217.63	$24,649.03	Yes		
2006	State Representative - District 17	DAN GRANSINGER	Republican	Yes	$12,510.00	$12,510.00	$0.00	No		
2006	State Representative - District 17	DAVID W HAMIRA	Democrat	Yes	$50,998.22	$22,409.94	$28,578.28	Yes		
2006	State Representative - District 17	ED ABLESER	Democrat	Yes	$51,128.57	$18,162.75	$32,965.82	Yes		
2006	State Representative - District 17	LAURA KNAPEREK	Republican	Yes	$51,450.56	$17,552.76	$33,897.80	Yes		
2006	State Representative - District 17	RHETT WILSON	Democrat	Yes	$14,875.00	$14,855.64	$19.36	No		
2006	State Representative - District 18	MARK ANDERSON	Republican	No	$15,136.03	$7,423.67	$7,712.36	Yes		*
2006	State Representative - District 18	RUSSELL PEARCE	Republican	No	$33,539.15	$20,262.99	$13,276.16	Yes		*

2006	State Representative - District 18	TAMMIE PURSLEY	Democrat	Yes	$34,419.70	$17,318.80	$17,100.90	Yes		p
2006	State Representative - District 19	KIRK ADAMS	Republican	No	$31,247.67	$23,220.15	$8,027.52	Yes	r	r
2006	State Representative - District 19	LARA WIRETO	Democrat	Yes	$50,192.19	$21,921.41	$28,270.78	Yes		p
2006	State Representative - District 19	RICH CRANDALL	Republican	Yes	$60,606.59	$17,916.68	$28,689.91	Yes	p	p
2006	State Representative - District 2	ALBERT TOM	Democrat	No	$3,664.84	$2,462.84	$1,202.00	Yes	r	r
2006	State Representative - District 2	ANN KIRKPATRICK	Democrat	Yes	$37,646.00	$19,788.84	$17,857.16	Yes	p	p
2006	State Representative - District 2	PRESTON KORN	Republican	Yes	$33,421.83	$23,564.65	$9,856.68	Yes		p
2006	State Representative - District 20	BOB ROBSON	Republican	No	$20,896.13	$10,377.67	$10,518.46	Yes		
2006	State Representative - District 20	JACK EDWARD HEALD	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Representative - District 20	JOHN MCCOMISH	Republican	No	$11,616.55	$5,538.17	$6,078.38	Yes		
2006	State Representative - District 21	DONNA WALLACE	Republican	Yes	$25,546.50	$25,546.50	$0.00	No		
2006	State Representative - District 21	PHIL HETTMANSPERGER	Democrat	Yes	$20,202.74	$11,631.15	$8,571.59	Yes		
2006	State Representative - District 21	STEVE YARBROUGH	Republican	Yes	$32,838.44	$20,893.44	$11,945.00	Yes		
2006	State Representative - District 21	WARDE NICHOLS	Republican	Yes	$32,163.00	$20,238.70	$11,924.30	Yes		
2006	State Representative - District 22	ANDY BIGGS	Republican	No	$22,474.07	$16,896.77	$5,578.30	Yes	r	
2006	State Representative - District 22	EDDIE FARNSWORTH	Republican	No	$20,381.40	$16,634.66	$3,746.74	Yes	r	
2006	State Representative - District 22	EDWARD SCHWEBEL	Libertarian	No	$0.00	$0.00	$0.00	Yes		

2006	State Representative – District 22	KARL KOHLHOFF	Republican	Yes	$31,346.45	$31,346.45	$0.00	No	p	
2006	State Representative – District 22	TERRI LEA TOBEY	Republican	No	$13,600.00	$13,600.00	$0.00	No	*	
2006	State Representative – District 23	BARBARA MCGUIRE	Democrat	Yes	$30,755.79	$19,642.83	$11,112.96	Yes		
2006	State Representative – District 23	FRANK PRATT	Republican	Yes	$44,959.68	$13,727.94	$31,231.74	Yes		
2006	State Representative – District 23	JOHN PILLMORE	Republican	Yes	$48,810.74	$24,811.69	$23,999.05	Yes		
2006	State Representative – District 23	KRISTA PACION	Democrat	Yes	$14,786.95	$14,786.95	$0.00	No		
2006	State Representative – District 23	PETE RIOS	Democrat	Yes	$47,739.20	$16,114.26	$31,624.94	Yes		
2006	State Representative – District 24	JOSEPH MEL MELCHIONNE	Republican	Yes	$35,235.70	$26,096.73	$9,138.97	Yes		
2006	State Representative – District 24	KEN ROSEVEAR	Republican	Yes	$31,946.03	$15,348.54	$16,597.49	Yes		
2006	State Representative – District 24	LYNNE PANCRAZI	Democrat	Yes	$35,918.95	$16,116.95	$19,802.00	Yes		
2006	State Representative – District 24	RODNEY MARTIN	Reform Party	No	$0.00	$0.00	$0.00	Yes		
2006	State Representative – District 24	THERESA ULMER	Democrat	Yes	$48,727.63	$13,346.03	$35,381.60	Yes		
2006	State Representative – District 25	GAIL GRIFFIN	Republican	No	$26,795.51	$8,154.55	$18,640.96	Yes	*	*
2006	State Representative – District 25	JENNIFER J BURNS	Republican	Yes	$50,266.00	$25,615.57	$24,650.43	Yes	p	p
2006	State Representative – District 25	MANUEL V ALVAREZ	Democrat	Yes	$49,476.68	$16,303.76	$33,172.92	Yes		p
2006	State Representative – District 25	PAT FLEMING	Democrat	Yes	$49,323.19	$17,543.87	$31,779.32	Yes		p
2006	State Representative – District 25	ROGER C CONDRA	Republican	Yes	$20,682.40	$20,682.40	$0.00	No	p	

2006	State Representative – District 25	WILLIAM H DORE	Other	No	$3,337.65	$3,087.65	$250.00	Yes			
2006	State Representative – District 26	CAROL SOMERS	Republican	No	$53,620.00	$53,620.00	$0.00	No	*		
2006	State Representative – District 26	DAVID JORGENSON	Republican	Yes	$76,637.29	$68,571.81	$20,065.48	Yes	p		p
2006	State Representative – District 26	LENA SARADNIK	Democrat	Yes	$37,404.36	$15,818.79	$21,585.57	Yes			p
2006	State Representative – District 26	LISA LOVALLO	Republican	No	$74,609.93	$74,598.93	$11.00	No	*		
2006	State Representative – District 26	PETER HERSHBERGER	Republican	No	$61,459.44	$49,044.82	$12,414.62	Yes	*		*
2006	State Representative – District 27	GENE CHEWNING	Republican	No	$3,953.97	$2,018.01	$1,935.96	Yes			*
2006	State Representative – District 27	OLIVIA CAJERO BEDFORD	Democrat	Yes	$35,375.36	$16,933.40	$18,441.96	Yes			p
2006	State Representative – District 27	PHIL LOPES	Democrat	Yes	$27,558.29	$13,258.36	$14,299.93	Yes			p
2006	State Representative – District 28	BILL PHILLIPS	Republican	Yes	$30,270.40	$19,628.22	$10,642.18	Yes			
2006	State Representative – District 28	DAVID BRADLEY	Democrat	Yes	$31,757.07	$20,899.54	$10,856.53	Yes	p		
2006	State Representative – District 28	MATT HEINZ	Democrat	Yes	$24,484.67	$24,484.67	$0.00	No	p		
2006	State Representative – District 28	STEVE FARLEY	Democrat	Yes	$31,635.41	$20,917.51	$10,717.90	Yes	p		
2006	State Representative – District 28	TED PREZELSKI	Democrat	No	$2,634.65	$2,634.65	$0.00	No	*		
2006	State Representative – District 29	BETTY LIGGINS	Democrat	No	$553.42	$553.42	$0.00	No	*		
2006	State Representative – District 29	BRUCE P MURCHISON	Republican	Yes	$30,438.00	$17,343.26	$13,094.74	Yes			p
2006	State Representative – District 29	LINDA LOPEZ	Democrat	Yes	$19,571.32	$10,649.29	$8,922.03	Yes	p		p

2006	State Representative - District 29	PATICIA ANNE PUIG	Democrat	No	$1,689.30	$1,538.66	$150.64	No	*	
2006	State Representative - District 29	TOM PREZELSKI	Democrat	No	$7,896.39	$4,430.51	$3,465.88	Yes	*	*
2006	State Representative - District 3	DORIS GOODALE	Republican	Yes	$25,809.72	$25,809.72	$0.00	No	p	
2006	State Representative - District 3	LUIS LOPEZ	Democrat	Yes	$32,035.36	$20,363.55	$11,671.81	Yes		p
2006	State Representative - District 3	NANCY MCLAIN	Republican	Yes	$43,013.14	$32,813.01	$10,200.13	Yes	p	p
2006	State Representative - District 3	RAY CULLISON II	Republican	Yes	$30,434.29	$30,434.29	$0.00	No	p	
2006	State Representative - District 3	TRISH GROE	Republican	No	$2,417.25	$2,417.25	$0.00	Yes	*	*
2006	State Representative - District 30	CLARENCE BOYKINS	Democrat	Yes	$46,009.51	$14,830.65	$31,178.86	Yes		p
2006	State Representative - District 30	DAVID GOWAN	Republican	Yes	$51,215.43	$51,215.43	$0.00	No	p	
2006	State Representative - District 30	FRANK CALLEGARI	Republican	Yes	$12,995.23	$12,995.23	$0.00	No	p	
2006	State Representative - District 30	JONATHAN PATON	Republican	No	$33,342.84	$30,505.67	$2,837.17	Yes	*	*
2006	State Representative - District 30	MARIAN MCCLURE	Republican	No	$39,998.15	$33,705.96	$6,292.19	Yes	*	*
2006	State Representative - District 4	DEBRA BOEHLKE	Democrat	Yes	$32,204.24	$18,303.65	$13,900.59	Yes	p	p
2006	State Representative - District 4	JUDY BURGES	Republican	Yes	$32,856.66	$22,296.72	$10,559.94	Yes		p
2006	State Representative - District 4	SUE DOLPHIN	Democrat	No	$4,584.62	$2,839.28	$1,745.34	Yes	*	*
2006	State Representative - District 4	TOM BOONE	Republican	Yes	$32,843.00	$19,875.00	$12,968.00	Yes		p
2006	State Representative - District 5	BILL KONOPNICKI	Republican	No	$4,618.31	$1,655.22	$2,963.09	Yes		

2006	State Representative – District 5	DAVE RODRIGUEZ	Democrat	No	$0.00	$0.00	$0.00	No		
2006	State Representative – District 5	JACK A BROWN	Democrat	No	$2,936.05	$383.20	$2,552.85	Yes		
2006	State Representative – District 6	CARL SEEL	Republican	Yes	$52,772.07	$52,772.07	$0.00	No	p	
2006	State Representative – District 6	CLARK THOMAS	Republican	Yes	$49,147.62	$49,147.62	$0.00	No	p	
2006	State Representative – District 6	DOUG CLARK	Republican	No	$22,984.48	$22,422.01	$562.47	Yes	"	
2006	State Representative – District 6	SAM CRUMP	Republican	No	$41,450.34	$37,196.64	$4,253.70	Yes	"	
2006	State Representative – District 7	DAVID BURNELL SMITH	Republican	No	$43,283.85	$41,466.31	$1,817.54	No		
2006	State Representative – District 7	HOWARD SPRAGUE	Republican	No	$3,705.99	$3,705.99	$0.00	No		
2006	State Representative – District 7	JEANNE LUNN	Democrat	Yes	$31,658.36	$14,856.87	$16,801.49	Yes		p
2006	State Representative – District 7	JIM IANNUZZO	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Representative – District 7	MARILYN FOX	Democrat	Yes	$31,077.30	$14,514.81	$16,562.49	Yes		p
2006	State Representative – District 7	NANCY BARTO	Republican	No	$47,627.41	$43,189.85	$4,437.56	Yes		"
2006	State Representative – District 7	RAY BARNES	Republican	No	$21,563.96	$16,693.98	$4,869.98	Yes		"
2006	State Representative – District 8	CAROLYN M SCHOENROCK	Republican	Yes	$56,244.00	$56,244.00	$0.00	No	p	
2006	State Representative – District 8	JIM BURKE	Republican	No	$34,811.58	$33,805.42	$1,006.16	No	"	
2006	State Representative – District 8	JOHN KAVANAGH	Republican	Yes	$88,746.11	$57,600.45	$31,145.66	Yes	p	p
2006	State Representative – District 8	MICHELE REAGAN	Republican	No	$65,723.37	$37,963.69	$27,759.68	Yes	"	"

2006	State Representative – District 8	STEPHANIE RIMMER	Democrat	Yes	$52,971.70	$18,985.15	$33,986.55	Yes		p
2006	State Representative – District 8	TRAVIS JUNION	Republican	Yes	$18,296.37	$18,296.37	$0.00	No	p	
2006	State Representative – District 8	WILLIAM H SANDBERG	Democrat	Yes	$19,796.36	$6,119.10	$13,677.26	Yes		p
2006	State Representative – District 9	BOB STUMP	Republican	No	$8,625.73	$8,397.32	$225.41	Yes		*
2006	State Representative – District 9	DAVID FRALEY	Republican	No	$4,783.05	$4,783.05	$0.00	No		
2006	State Representative – District 9	RICK MURPHY	Republican	No	$6,326.08	$2,429.63	$3,898.45	Yes		*
2006	State Representative – District 9	SHERI VAN HORSEN	Democrat	Yes	$31,627.46	$16,241.31	$15,386.15	Yes		p
2006	State Senator – District 1	ELISE TOWNSEND	Republican	No	$41,421.06	$41,421.06	$0.00	No		
2006	State Senator – District 1	JO KELLEHER	Democrat	Yes	$33,402.56	$21,707.56	$11,695.00	Yes		p
2006	State Senator – District 1	TERRY DUNN	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Senator – District 1	TOM O'HALLERAN	Republican	No	$117,816.39	$115,781.52	$2,034.87	Yes		*
2006	State Senator – District 1	WILLIAM STOLL	Republican	No	$102,533.18	$102,533.18	$0.00	No		
2006	State Senator – District 10	DANIEL M POLAND	Libertarian	No	$0.00	$0.00	$0.00	No		
2006	State Senator – District 10	LINDA GRAY	Republican	Yes	$32,108.19	$14,250.33	$17,857.86	Yes		
2006	State Senator – District 10	MARTIN JAMES MONROE	Democrat	Yes	$30,330.96	$13,050.64	$17,280.32	Yes		
2006	State Senator – District 11	ANN WALLACK	Democrat	Yes	$67,711.43	$15,386.94	$52,324.49	Yes		p
2006	State Senator – District 11	BARBARA LEFF	Republican	No	$66,212.44	$26,103.48	$40,108.96	Yes		*

2006	State Senator – District 12	ROBERT BLENDU	Republican	No	$9,631.27	$9,631.27	$0.00	Yes		
2006	State Senator – District 13	RICHARD MIRANDA	Democrat	No	$8,893.00	$7,778.31	$1,114.69	Yes		
2006	State Senator – District 14	DEBBIE MCCUNE DAVIS	Democrat	No	$9,450.36	$8,085.38	$1,364.98	Yes		
2006	State Senator – District 15	ANDREW SMIGIELSKI	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Senator – District 15	JOHN WILLIAMS	Libertarian	No	$0.00	$0.00	$0.00	No		
2006	State Senator – District 15	KEN CHEUVRONT	Democrat	Yes	$32,699.14	$14,781.42	$17,917.72	Yes		
2006	State Senator – District 16	DANIEL VERES	Republican	Yes	$31,863.00	$16,356.68	$5,506.32	Yes		
2006	State Senator – District 16	LEAH LANDRUM	Democrat	Yes	$32,833.00	$24,283.77	$8,549.23	Yes		
2006	State Senator – District 17	MEG BURTON CAHILL	Democrat	Yes	$33,422.00	$15,376.03	$18,045.97	Yes		
2006	State Senator – District 17	ROSE CRUTCHER	Republican	Yes	$65,826.92	$15,711.51	$50,115.41	Yes		
2006	State Senator – District 18	JOE BROWN	Republican	No	$686.88	$686.88	$0.00	No		
2006	State Senator – District 18	KAREN S JOHNSON	Republican	No	$19,365.81	$14,008.35	$5,357.46	Yes		
2006	State Senator – District 18	RACHEL KIELSKY	Libertarian	No	$0.00	$0.00	$0.00	Yes		
2006	State Senator – District 19	CHUCK GRAY	Republican	No	$41,369.13	$27,742.94	$13,626.19	Yes		*
2006	State Senator – District 19	STEVEN ZACHARY	Democrat	Yes	$46,212.09	$11,938.37	$34,273.72	Yes		p
2006	State Senator – District 2	ALBERT HALE	Democrat	No	$4,465.52	$200.00	$4,265.52	Yes		*
2006	State Senator – District 2	MARK HAUGHWOUT	Other	No	$11,652.14	$1,866.17	$9,785.97	Yes		

2006	State Senator – District 2	ROYCE JENKINS	Republican	Yes	$31,403.89	$25,150.39	$6,253.50	Yes		p
2006	State Senator – District 20	DONNA GRATEHOUSE	Democrat	Yes	$30,904.77	$16,323.11	$14,581.66	Yes		
2006	State Senator – District 20	JOHN HUPPENTHAL	Republican	Yes	$32,962.34	$15,041.00	$17,921.34	Yes		
2006	State Senator – District 21	JAY TIBSHRAENY	Republican	No	$18,208.81	$15,915.80	$2,293.01	Yes		
2006	State Senator – District 22	GLENN RAY	Democrat	Yes	$30,757.17	$13,782.54	$16,974.63	Yes		p
2006	State Senator – District 22	JOE BEDGOOD	Republican	Yes	$24,203.92	$24,203.92	$0.00	No	p	
2006	State Senator – District 22	THAYER VERSCHOOR	Republican	No	$36,173.58	$21,594.29	$14,579.29	Yes	*	*
2006	State Senator – District 23	CHERYL CHASE	Republican	No	$41,971.79	$35,245.44	$6,726.35	Yes		*
2006	State Senator – District 23	REBECCA RIOS	Democrat	Yes	$68,325.42	$23,116.18	$45,209.24	Yes		p
2006	State Senator – District 24	AMANDA AGUIRRE	Democrat	Yes	$46,594.07	$14,651.21	$31,942.86	Yes		
2006	State Senator – District 24	RUSS JONES	Republican	Yes	$68,463.96	$23,514.66	$44,949.30	Yes		
2006	State Senator – District 24	STANLEY LENIHAN	Reform Party	No	$1,036.76	$130.00	$906.76	Yes		
2006	State Senator – District 25	MARSHA ARZBERGER	Democrat	No	$20,772.55	$10,455.30	$10,317.25	Yes		*
2006	State Senator – District 25	MARY ANN BLACK	Republican	Yes	$62,095.39	$37,433.26	$24,662.13	Yes		p
2006	State Senator – District 26	AL MELVIN	Republican	Yes	$91,808.11	$58,537.78	$33,270.33	Yes	p	p
2006	State Senator – District 26	CHARLENE PESQUIERA	Democrat	No	$29,366.77	$3,303.25	$26,063.52	Yes		*
2006	State Senator – District 26	TONI HELLON	Republican	No	$114,977.72	$94,375.52	$20,602.20	No	*	

2006	State Senator – District 27	JORGE LUIS GARCIA	Democrat	No	$2,206.99	$206.99	$2,000.00	Yes		
2006	State Senator – District 28	JOHN MICHAEL STEIMER	Write In	No	$0.00	$0.00	$0.00	Yes		
2006	State Senator – District 28	PAULA ABOUD	Democrat	Yes	$21,985.25	$21,433.56	$551.69	Yes		
2006	State Senator – District 28	TED DOWNING	Democrat	Yes	$29,754.71	$29,754.71	$0.00	No		
2006	State Senator – District 29	VICTOR SOLTERO	Democrat	No	$7,635.70	$5,750.44	$1,885.26	Yes		
2006	State Senator – District 3	NOAH K HARRIS	Democrat	No	$3,150.72	$279.31	$2,871.41	Yes		
2006	State Senator – District 3	RON GOULD	Republican	No	$11,248.65	$5,002.47	$6,246.18	Yes		
2006	State Senator – District 30	JEFFREY CHIMENE	Democrat	Yes	$63,338.36	$25,668.12	$37,670.24	Yes		p
2006	State Senator – District 30	TIM BEE	Republican	No	$73,547.90	$26,850.14	$46,697.76	Yes		*
2006	State Senator – District 4	ED GOGEK	Democrat	Yes	$33,722.74	$18,905.00	$14,817.74	Yes		
2006	State Senator – District 4	JACK HARPER	Republican	Yes	$32,963.00	$21,729.27	$11,233.73	Yes		
2006	State Senator – District 4	WILLARD WHALEN	Republican	Yes	$20,708.00	$20,708.00	$0.00	No		
2006	State Senator – District 5	JAKE FLAKE	Republican	No	$15,906.53	$10,534.09	$5,372.44	Yes		*
2006	State Senator – District 5	PHIL COBB	Democrat	Yes	$18,970.46	$11,932.55	$7,037.91	Yes		p
2006	State Senator – District 6	JIM LARSON	Democrat	Yes	$31,695.17	$15,094.50	$16,600.67	Yes		p
2006	State Senator – District 6	PAMELA GORMAN	Republican	No	$43,657.39	$38,105.61	$5,551.78	Yes	*	*
2006	State Senator – District 6	TED CARPENTER	Republican	Yes	$44,129.33	$44,129.33	$0.00	No	p	

2006	State Senator - District 7	JIM WARING	Republican	No	$80,150.26	$9,468.70	$70,681.56	Yes			*
2006	State Senator - District 7	LISA BLACK	Democrat	Yes	$86,368.00	$17,276.07	$51,091.93	Yes			p
2006	State Senator - District 8	CAROLYN S. ALLEN	Republican	No	$139,700.85	$148,123.43	$10,577.42	Yes	*		*
2006	State Senator - District 8	COLETTE ROSATI	Republican	Yes	$57,322.00	$57,322.00	$0.00	No	p		
2006	State Senator - District 8	DAN OSBAN	Democrat	Yes	$30,558.83	$12,696.63	$17,862.00	Yes			p
2006	State Senator - District 9	ROBERT BURNS	Republican	No	$22,643.20	$4,843.24	$17,800.00	Yes			*
2006	State Senator - District 9	STEVE MOB.	Democrat	Yes	$32,528.78	$23,084.83	$9,443.95	Yes			p
					$4,481,390.00	$4,058,307.22	$2,422,845.20				

For race analysis:

* designates traditional candidate

p designates participating candidate

Traditional candidate vs participating candidate spending in primary and general	
sum of participating candidates in the primary =	$2,492,046.34
number of participating candidates in primary =	114
spending in Primary per participating candidate =	$21,860.06
sum of traditional candidates in the primary =	$1,566,458.88
number of participating candidates in primary =	92
spending in primary per traditional candidate =	$17,026.73
sum of participating candidates in general =	$1,755,087.59
number of participating candidates in general =	85
spending in general per participating candidate =	$20,648.09
sum of traditional candidates in general =	$644,106.77
number of traditional candidates in general =	73
spending in general per traditional candidate =	$8,823.38

Following calculations made using only races where a traditional candidate faced on or more participating candidates	
sum of traditional candidates who faced a participating candidate in the primary =	$845,628.78
number of traditional candidates who faced a participating candidate in the primary =	31
spending in primary per traditional candidate who faced a participating candidate =	$27,278.35
sum of participating candidates in those elections =	$1,023,537.78
number of participating candidates in those elections =	34
spending in primary per participating candidate in those elections =	$30,104.05
sum of traditional candidates who faced a participating candidate in the general =	$553,550.89
number of traditional candidates who faced a participating candidate in the general =	36
spending in general per traditional candidate who faced a participating candidate =	$15,376.41

sum of participating candidates in those elections =	$1,017,263.25
number of participating candidates in those elections =	46
spending in general per participating candidate in those elections =	$22,114.42

Following calculations made using same method as above and ignoring traditional candidates who spent more than the spending cap and their participating opponents	
sum of traditional candidates who faced a participating candidate in the primary =	$425,866.08
number of traditional candidates who faced a participating candidate in the primary =	26
spending in primary per traditional candidate who faced a participating candidate =	$16,379.46
sum of participating candidates in those elections =	$849,106.19
number of participating candidates in those elections =	31
spending in primary per participating candidate in those elections =	$27,390.52

sum of traditional candidates who faced a participating candidate in the general =	$332,718.31
number of traditional candidates who faced a participating candidate in the general =	33
spending in general per traditional candidate who faced a participating candidate =	$10,082.37
sum of participating candidates in those elections =	$874,336.96
number of participating candidates in those elections =	43
spending in general per participating candidate in those elections =	$20,333.42

Calculations made with only top 10% of spenders	
Top 10% in primary spending total =	$1,311,528.49
Number of candidates in top 10% =	21
Primary spending per candidate in top 10% =	$62,453.74
Top 10% in general spending total =	$980,323.70
Number of candidates in top 10% =	21
General spending per candidate in top 10% =	$46,682.08

Calculations made with all traditional, major-party candidates	
Traditional major party candidate spending total =	$2,218,126.64
Number of traditional major party candidates =	77
Total spending per traditional major party candidate =	$28,806.84

U.S. District Court for the District of Arizona

(Filed Jul. 17, 2009)

[Title Omitted In Printing]

PRIMARY FUNDING OVERVIEW REPORT					CITIZENS CLEAN ELECTIONS COMMISSION
CANDIDATE NAME:	**GOODALE, DORIS**	**Max Funding Possible**	**Initial Funding**	**Equalizing Funding**	**Total Funds Issued To Date**	**Balance of Funds Available**
CANDIDATE ID:	200803019					
OFFICE SOUGHT:	State Representative – District 3	$58,146.00	$19,382.00	$6,431.90	$26,213.90	$31,932.10

Date Initiated	Date	Current Stage	Funding Type	Basis of Matching (Independent expenditure, traditional candidate exceeded trigger threshold)	Trigger Amount or Cost of Ind. Expenditure	Funding Amount	Funding To Date From Source
06/30/2008	06/30/2008	Paid/ Completed	Primary Initial	Initial Funding		$12,921.00	$12,921.00
07/01/2008	07/01/2008	Paid/ Completed	Primary Initial	Initial Funding		$6,461.00	$19,382.00
08/06/2008	08/07/2008	Paid/ Completed	Primary Ind Expenditure	1452 – HOME BUILDERS ASSN OF CENTRAL AZ POLITICAL ACTION COMMITTEE Benefits – 200803338 – TRISH GROE On 07/29/2008	$2,196.12	$2,064.35	$2,064.35
08/06/2008	08/07/2008	Paid/ Completed	Primary Ind Expenditure	1452 – HOME BUILDERS ASSN OF CENTRAL AZ POLITICAL ACTION COMMITTEE	$2,196.12	$2,064.35	$4,128.70
08/25/2008	08/27/2008	Paid/ Completed	Primary Equalizing	200803338 – GROE 2008	$24,536.84	$1,869.58	$1,869.58
08/25/2008	08/27/2008	Paid/ Completed	Primary Equalizing	200803502 – COMMITTEE TO ELECT NANCY MCLAIN	$23,494.75	$633.62	$633.62

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,

Plaintiffs,

and

DEAN MARTIN, a citizen of the State Of Arizona, *et al.*,

Plaintiff-Intervenors

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*,

Defendants.

Civil Action No. 08-1550-PHX-ROS

Hon. Roslyn O. Silver, presiding

DECLARATION OF JOSHUA L. HEATH IN SUPPORT OF PLAINTIFF-INTERVENORS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT BY CLEAN ELECTIONS, INC.

[1] Admitted *pro hac vice*

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

(Filed Jul. 17, 2009)

I, JOSHUA L. HEATH, pursuant to 28 U.S.C. § 1746(2), hereby declare under penalty of perjury as follows:

1. I am twenty-five years of age, of sound mind, and willing to testify to all matters set forth herein under oath in a court of law or otherwise. I have personal knowledge of all facts set forth in this Declaration.

2. I am a citizen of the United States and a resident of Virginia Beach County, Virginia.

3. I am currently a law clerk at the Institute for Justice. In the past I have worked as a judicial intern at Portsmouth General District Court in Portsmouth, Virginia, and also worked as a personal intern to Arizona State Senator Jack Harper during my undergraduate studies at Grand Canyon University in Phoenix, Arizona.

4. I was asked by counsel for Plaintiff-Intervenors to review the data sources referenced in Defendant-Intervenors' Memorandum in Support of Motion for Summary Judgment, Donald Green's Declaration in Support of Motion for Summary Judgment, and Angela Migally's Declaration in Support of Motion for Summary Judgment.

* * *

27. However, complete data from Wisconsin Campaign Finance Project reveals that although $6,317,736 were spent in 2006 (a number similar to the amount cited by Green for 2006), in 1998 $3,779,483 (in 2006 dollars) were spent. Attached to this Declaration as Attachment 11 is a true and correct copy of the material located at Wisconsin Campaign Finance Project, *Arizona Data*, http://campfm.polisci.wisc.edu/ArizonaData.asp (last visited July 8, 2009), which I downloaded from such site. This material has not been altered or manipulated in any way.

28. The Project's 1998 figure is 183.32% higher than the figure that Defendant-Intervenor cites, and thus reflects only a 67.16% increase in total spending from 1998 to 2006 rather than the 400% increase that Dr. Green states. The average spending in 1998, according to the Project's data, was $21,847 (2006 dollars), which is 189.86% higher than the figure Defendant-Intervenor asserts. *Id.* Again rather than 400% increase Defendant-Intervenor claims, the increase amounts to a mere 40.38% increase. In other words Defendant-Intervenor has grossly exaggerated the amount of increased spending by a multiplier of nearly 10.

29. All 1998 expenditure amounts have been adjusted for inflation using the same Consumer Price Index inflation calculator cited by Ms. Migally in her declaration; a calculator on which Dr. Green also relied in calculating his own data. Bureau of Labor Statistics,

Overview of BLS Statistics on Inflation and Prices, http://www.bls.gov/bls/inflation.htm (last visited July 9, 2009).

30. The data from followthemoney.org also similarly reveals the same errors. This even more comprehensive site which has recorded 98% of all reports to date, records $5,349,845 dollars spent in 1998, as opposed to $6,926,010 in 2006, which is 301.04% higher than the figure Dr. Green relied on, and an average of $30,571 per candidate in 1998 as opposed to $34,287 in 2006, 305.61% higher than the figure Dr. Green relied on. This amounts to a total increase in spending from 1998 to 2006 of only 29.46% and an increase in average spending of only 12.16%. Defendant-Intervenors' inaccurate 400% figure is nearly 13 times the actual amount of increase in total spending and nearly 33 times the actual amount of increase in average spending. Attached to this Declaration as Attachment 12 is a true and correct copy of the materials located at Followthemoney.org, *State Overview: Arizona 1998*, http://www.followthemoney.org/database/state_overview.phtml?s=AZ&y=1998 (last visited July 16, 2009), which I downloaded from such site. This material has not been altered or manipulated in any way. Attached to this Declaration as Attachment 13 is a true and correct copy of the materials located at Followthemoney.org, *State Overview: Arizona 2006*, http://www.followthemoney.org/database/state_overview.phtml?s=AZ&y=2006 (last visited July 16, 2009), which I downloaded from such site.

This material has not been altered or manipulated in any way.

* * *

I, Joshua Logan Heath, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 16th day of July, 2009, in Tempe, Arizona.

/s/ Joshua L. Heath
Joshua L. Heath

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, a citizen of the United States Of Arizona, *et al.*, Plaintiff-Intervenors vs. KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*, Defendants,	Civil Action No. 08-1550-PHX-ROS DECLARATION OF DAVID M. PRIMO, Ph.D. IN SUPPORT OF THE PLAINTIFF-INTERVNORS' RESPONSE TO DEFENDANT-INTERVENOR CLEAN ELECTIONS INSTITUTE, INC.'S MOTION FOR SUMMARY JUDGMENT (Filed Jul. 17, 2009)

[1] Admitted *pro hac vice*.

and	)	(Assigned to the
	)	Honorable
CLEAN ELECTIONS INSTITUTE, INC.	)	Roslyn O. Silver)
	)	
Defendant-Intervenor.	)	

I, David M. Primo, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of New York, and over the age of 18 years. I make this declaration in support of Plaintiff-Intervenors' Response to Defendant-Intervenor Clean Elections Institute, Inc.'s Motion for Summary Judgment based on my personal knowledge of the facts stated herein.

2. I have been asked by counsel for the Plaintiff-Intervenors to evaluate the effect of the matching funds provision of the Arizona Clean Elections law on candidate behavior. I was paid $225 per hour for the work on my initial and rebuttal reports; in addition, I will be compensated $250 per hour for any subsequent testimony.

3. In his declaration, Prof. Donald Green writes in statement 13, "If anything Arizona's matching fund system may be credited with a dramatic increase in the overall quantity of campaign communication, as gauged by the number of candidates and their cumulative campaign expenditures. In 1998, 177 legislative candidates spent a total of $1,333,999

(in 2006 dollars); by 2006, 206 legislative candidates spent a total of $6,487,133."

4. This assertion was used by Defendant-Intervenor to claim that the act has resulted in a "surge" in campaign spending.

5. It has come to my attention that both Prof. Green's claim and Defendant-Intervenor's interpretation of Prof. Green's findings are incorrect because Prof. Green was working with incomplete data. Because the source of Prof. Green's data was previously unclear, I was unaware that Prof. Green relied on such faulty data when I wrote my expert rebuttal report or my declaration in support of the Plaintiff-Intervenors' Motion for Summary Judgment.

6. The National Institute on Money in State Politics makes available comprehensive state-level campaign finance data on its website, followthe money.org. The data is commonly used by researchers in the political science field working on campaign finance issues.

7. The followthemoney.org database indicates that total spending by legislative candidates in 1998 Arizona legislative elections was $5,349,925 (in 2006 dollars), not $1,333,999, as Prof. Green reported. Put another way, Prof. Green's figures underreported total spending in 1996 by over 300%. Once the correct figures for 1998 and 2006 are used, the difference between total 1998 and 2006 spending is much smaller than reported by Prof. Green.

8. The difference between 1998 and 2006 spending is even more muted when average spending per candidate is examined. Average spending per candidate in Senate races was virtually unchanged from 1998 to 2006, and average spending in House races increased by only 21%. Overall spending per candidate in all legislative races increased by a mere 12%.

9. Data from the followthemoney.org website clearly shows that many states have seen a surge in campaign spending since 1998. Arizona is not one of them.

10. Finally, Prof. Green's focus on totals obscures a more important effect of the Clean Elections law: it alters who speaks, and when. This effect is important regardless of aggregate levels of spending.

11. My expert report demonstrated that the matching provision of the Clean Elections law changes the timing of contributions, the timing of expenditures, and the strategies of candidates, with deleterious effects on free expression.

12. In conclusion, Prof. Green's assertion that campaign spending has increased dramatically since the inception of Clean Elections is incorrect. In absolute terms, spending has increased modestly since Clean Elections has been enacted. Moreover, the change in total spending masks the harms to free expression for candidates choosing not to accept public monies in campaigns.

I certify and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief. Executed this 17th day of July, 2009, in Rochester, NY.

/s/ David M. Primo
David M. Primo

BRADLEY S. PHILLIPS (*pro hac vice*)
Brad.Phillips@mto.com
GRANT A. DAVIS-DENNY (*pro hac vice*)
Grant.Davis-Denny@mto.com
ELISABETH J. NEUBAUER (*pro hac vice*)
Elisabeth.Neubauer@mto.com
PUNEET K. SANDHU (*pro hac vice*)
Puneet.Sandhu@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

MONICA YOUN (*pro hac vice*)
monica.youn@nyu.edu
ANGELA MIGALLY (*pro hac vice*)
angela.migally@nyu.edu
THE BRENNAN CENTER FOR JUSTICE AT NYU
SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Telephone: (212) 992-8158
Facsimile: (212) 995-4550

TIMOTHY M. HOGAN (004567)
ARIZONA CENTER FOR LAW IN THE
PUBLIC INTEREST
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004
Telephone: (602) 258-8850

Attorneys for Defendant-Intervenor
CLEAN ELECTIONS INSTITUTE, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*, Plaintiffs, and DEAN MARTIN, *et al.*, Plaintiff-Intervenors, vs. KEN BENNETT, *et al.*, Defendants, and CLEAN ELECTIONS INSTITUTE, INC., Defendant-Intervenor.	CASE NO. CV-08-1550-PHX-ROS (Assigned To The Honorable Roslyn O. Silver) **DEFENDANTS' AND DEFENDANT-INTERVENOR'S JOINT RESPONSE TO PLAINTIFFS' SEPARATE STATEMENT** (Filed Jul. 17, 2009)

Defendants and Defendant-Intervenor (collectively "Defendants") submit this joint response to Plaintiffs' separate statement of undisputed material facts in support of their summary-judgment motion, in compliance with Federal Rules of Evidence 56(e) and Local Rules 7.2(m)(2) and 56.1(b).

* * *

Statement of Undisputed Fact	**Plaintiffs' Response and Support**
* * *	
36. The CCEC awarded matching funds in the	36. NOT DISPUTED. **EVID. OBJECTIONS:**

total amount of $12,574.25 to Carl Seel based on the expenditures made by Sam Crump on August 14, 28 and 29, 2008. (Bouie MSJ Dec., pp. 13:23-28, 14:1-13.)	*See* Bouie MSJ Decl. Objections below.
* * *	
44. Based on McComish's reported expenditure of approximately $43,080.40, on or about August 7, 2008, his participating candidate opponent Jeff Dial was awarded $14,755.64 in matching funds; on or about August 8, 2008, his participating opponent Andy Swan was given $13,864.90; and on or about August 14, 2008, his participating opponent Frank Schmuck was given $13,665.64 in matching funds. (McComish MSJ Dec., p. 5:19-28.)	44. **IN DISPUTE.** The record contains evidence contradicting this "fact." *See* Additional Facts Nos. 20 and 21 below. The amount and dates that matching funds were issued to Mr. Swann and Rep. Dial is NOT DISPUTED. **EVID. OBJECTIONS:** *See* McComish MSJ Decl. Objections below.
45. By August 14, 2008, based on McComish's reported expenditure of $43,080.40, his participating opponents received a total of $42,286.18 in matching funds in addition to $58,146.00 in lump sum public financing, or nearly $100,000. (McComish MSJ Dec., pp. 5:19-28, 6:1-2.)	45. NOT DISPUTED but neither relevant nor material to any issue on summary judgment. **EVID. OBJECTIONS:** *See* McComish MSJ Decl. Objections below.
* * *	

49. By August 20, 2008, McComish's participating opponents had received a total of $82,081.98 in matching funds, plus their original $58,146.00 lump sum of public financing, for a grand total of $140,227.98 as against direct and independent expenditures in support of the McComish campaign of less than $50,000. (McComish MSJ Dec., p. 7:3-10.)	49. NOT DISPUTED. **EVID. OBJECTIONS:** *See* McComish MSJ Decl. Objections below.

* * *

64. McLain's primary campaign expenditures exceeded the primary election spending limit for her opposing participating candidate, and at least $833.62 in "equalizing" matching funds were triggered to Doris Goodale on or about August 27, 2008. (McLain MSJ Dec., p. 4:14-28.)	64. NOT DISPUTED. **EVID. OBJECTIONS:** *See* McLain MSJ Decl. Objections below.

* * *

101. When their clients are faced by opposing participating candidates, political campaign consultants	101. NOT DISPUTED. The statement is not material, however, to any issue in dispute for

in Arizona routinely advise their traditional candidate clients to minimize the competitive disadvantage of Matching Funds by minimizing fundraising or spending to minimize matching funds and/or to alter their mode of fundraising and spending in ways that minimize the benefit of matching funds. (Osborn MSJ Dec., pp. 7-28:1-16, Exs. 3-7, 9-10; McComish MSJ Dec., p. 7:10-21; Subach MSJ Dec. CCEC, Ex. 2 ("But with those candidates who choose not to participate in public funding, the candidates have to concern themselves not only with complying with reporting requirements for campaign contributions, but also avoiding expenditures that could trigger matching funds to their opponents").)	purposes of summary judgment. The "advice" given to traditional candidates does not establish that such candidates in fact alter their fundraising or spending actions based upon the availability of matching funds to their participating opponents. To the contrary, the evidence shows that traditional candidate spending has *increased* since the implementation of the Clean Elections Act. *See* Additional Facts Nos. 44-48 below. **EVID. OBJECTIONS:** Exhibit 2 to the Subach CEI Declaration constitutes inadmissible hearsay. Fed. R. Evid. 801, 802. *See* Osborn and McComish MSJ Decl. Objections below.
*	* *
133. Corporation Commissioner Sam George's self-financed traditional candidacy in the 2008 primary and general	133. NOT DISPUTED. However, the portions of the Osborn Declaration cited do not provide any support for this "fact."

election triggered nearly one million dollars in matching funds to his "solar team" teammates, Paul Newman and Sandra Kennedy. (Osborn MSJ Dec., p. 43:1-15, Ex. 8; ECF 145-3 (Newman Dep.), 35:21-25, 36:1-17, 37:15-25, 38:1-16, 41:1-4, 45:5-11, 53:5-24, 54:1-25, 56:3-21, 72:9-25, 73:1-25, 74:1-22, 77:15-25, 78:1-25, 79:1-24, 80:1-20, Exs. 1, 3, 4; ECF 145-7 (George Dep.), 65:10-24; ECF 145-4 (Kennedy Dep.) 22:3-16, 66:14-25, 67:1-25, 68:1-14, Exs. 1, 4.)	*See* Additional Facts No. 133 below. **EVID. OBJECTIONS:** Exhibit 8 to the Osborn Declaration is a newspaper article that is hearsay and it is not referenced in the designated portion of Dr. Osborn's declaration or is there any indication that it is being used for any purpose other than the truth of the matters asserted therein. As such, it is inadmissible hearsay. Fed. R. Evid. 801, 802. *See* Osborn MSJ Decl. Objections below.
* * *	
190. The professional lobbyist hired by the Commission two years ago is Mike Williams through his lobbying firm, Williams and Associations (hereinafter "Mike Williams"). (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3; CCEC Dep. (Lang), pp. 296-97; CCEC Dep. (Ruiz), pp. 102, 131, Exs. 4, 5.)	190. NOT DISPUTED. The asserted "fact" is neither material nor relevant to any issue on summary judgment. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.

191. Mike Williams has the reputation of being a highly effective and influential lobbyist for powerful special interests. (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3; Sinema Dep., pp. 22-24.)	191. NOT DISPUTED. The asserted "fact" is neither material nor relevant to any issue on summary judgment. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.
192. Since 2007, Mike Williams' contract with the Commission has ranged from $70,000 to $90,000 per year, which is a substantial amount of compensation for a lobbyist in Arizona. (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3; Sinema Dep., pp. 22-24; CCEC Dep. (Lang), pp. 296-97; CCEC Dep. (Ruiz), pp. 102, 131, Exs. 4, 5.)	192. **IN DISPUTE.** The deposition testimony and exhibits cited do not support this purported "fact." *See* Additional Facts No. 79 below. In any event, the asserted "fact" is neither material nor relevant to any issue on summary judgment. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.
193. The CCEC has an active program to lobby the Arizona State Legislature and the Governor's office on legislation relating to the operation of their agency and elections in general. (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3; CCEC Dep. (Lang), pp. 270-310, Ex. 30; CCEC Dep. (Ruiz), pp. 102, 131, Exs. 4, 5, 8 (D01056 et seq.).)	193. **IN DISPUTE.** The deposition testimony and exhibits cited do not support this purported "fact." *See* Additional Facts No. 80 below. In any event, the asserted "fact" is neither material nor relevant to any issue on summary judgment. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.

194. Mike William's lobbying contract with the CCEC is priced for the purposes of pursuing a proactive agenda. (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3.)	194. **IN DISPUTE.** Defendants dispute this "fact" because it is not clear what the term "proactive agenda" means. Further, the record contains evidence contradicting this purported "fact." *See* Additional Facts No. 79 below. In any event, the asserted "fact" is neither material nor relevant to any issue on summary judgment. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.
195. Through Mike Williams, the Commission has lobbied to block legislative action that threatened its existence, such as amendments that the Commission feared would have made it more likely that voters might repeal the Clean Elections Act. (Osborn MSJ Dec., pp. 31:27-28, 32-36:1-3.)	195. NOT DISPUTED. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.
196. During the 2009 legislative session, the CCEC has been lobbying members through Mike	196. **IN DISPUTE.** The record contains evidence contradicting this "fact." *See* Additional

Williams, with Executive Director Todd Lang's direct involvement, to amend the Clean Elections Act to eliminate its matching funds component and replace it with massively increased contribution limits for both participating and traditional candidates. (Osborn MSJ Dec., p. 41:11-19; CCEC Dep. (Lang), pp. 270-310, Ex. 30; CCEC Dep. (Ruiz), pp. 102, 131, Ex. 10 (D01845-1048).)	Facts Nos. 117-122 below. **EVID. OBJECTIONS:** *See* Osborn MSJ Decl. Objections below.

* * *

Statement of Additional Fact	**Evidentiary Support**

* * *

5. Mr. Bouie's reported campaign expenditures during the primary election period triggered $11,171.61 in matching funds for Mr. Carl Seel on or about August 13, 2008.	5. Declaration of Tanja K. Shipman in Support of Defendants' Response to Plaintiffs' and Plaintiff-Intervenors' Motions for Summary Judgment ("Shipman Resp. Decl.") Ex. 14 (Seel CCEC 2008 Primary Elections Funding Overview).

* * *

8. Mr. Bouie reported accepting individual, lobbyist and PAC contributions totaling $22,598.52 during the July 10, 2008 to August 13, 2008 time period.	8. Shipman Resp. Decl. Ex. 11 at 6-18 (Bouie 2008 Pre-Primary Election Report).
9. Participating candidates may only spend public funds to benefit his or her own campaign and any "common" advertising would necessarily have to be paid for on a pro-rated basis.	9. Lang Resp. Decl. at ¶ 6.

* * *

19. Rep. McComish triggered matching funds of $2,718.01 for his opponents in the primary on August 20, 2008 and, after that date, he reported spending money on newspaper ads, political consultants and polling/ research on August 29, 2008 for a total cost of $7,359.00.	19. Shipman Resp. Decl. Ex. 21 at 7 (2008 McComish Post-Primary Election Report).

* * *

21. Matching funds in the amount of $13,665.64 were issued to Frank Schmuck on or about August 7, 2008.	21. Lang Resp. Decl. at ¶ 9 & Ex. B.

22. The mailer contained at Ex. JM3 of Rep. McComish's Declaration has a picture of a lion and states "Courageous Leadership . . . Representative John McComish sees what is possible, and is willing to do what is needed to make Arizona a better place to live, work and raise a family." (Ellipses in original.)	22. Declaration of John McComish in Support of Plaintiffs' Motion For Summary Judgment ("McComish MSJ") [Dkt. 3156] at Ex. JM5.
23. The mailer at Ex. JM2 of Rep. McComish's Declaration has a picture of Rep. McComish and states "Advocates for Arizona Business."	23. McComish MSJ Decl. [Dkt. 316] at Ex. JM2.
24. Rep. McComish did not contact the CCEC or raise any objection with the CCEC regarding the matching funds issued as a result of this expenditure.	24. Lang Resp. Decl. at ¶ 11.
25. The Arizona Association of Realtor PAC made numerous other independent expenditures supporting Rep. McComish's campaign on August 25, 2008, October 7, 2008, October 21, 2008, October	25. Shipman Resp. Decl. at Ex 19 at 4 (2008 AZ Assoc. of Realtors' PAC Post-Primary Election Report), Ex. 20 at 5-7 (2008 AZ Assoc. of Realtors' PAC Post-General Election Report).

27, 2008 and October 29, 2008, which Rep. McComish does not complain about.	

* * *

27. Rep. McComish triggered matching funds of $2,718.01 for his opponents in the primary on August 20, 2008 and, after that date, he reported spending money on newspaper ads, political consultants and polling/research on August 29, 2008 for a total cost of $ 7,359.00.	27. Shipman Resp. Decl. Ex. 21 at 7 (McComish 2008 Post-Primary Election Report).

* * *

31. Rep. McLain's expenditures triggered only $833.62 in matching funds to Doris Goodale on or about August 27, 2008.	31. Lang Resp. Decl. Ex. C (2008 CCEC Overview report for Doris Goodale).

* * *

84. Commissioner Daniels also stated that "[Todd Lang] felt like he needed some help, because there's been a lot of issues at the legislature trying to sweep the funds, which is still going on. Trying to basically gut Clean Elections, a number of issues. So they were monitoring various	84. Shipman Decl. Ex. 26 at 267:6-18 (Daniels Depo.).

pieces of legislation. Very rarely do they take a stand on an issue. They monitor it to see what it's going to affect them, but they do take issues sometimes. And I know he does bring that to the Commission. I have not always been in agreement with where the Commission is as a majority on those issues, but obviously, I'm one member."	

* * *

117. The Commission supported the recent proposals made by Representatives Chad Campbell (a traditional candidate in 2008), Kyrsten Sinema (a participating candidate in 2008), Michele Reagan (a traditional candidate in 2008), David Gowan (a participating candidate in 2008), Andrew Tobin (a traditional candidate in 2008), and Rich Crandall (a participating candidate in 2008) in HB 2603.	117. Lang Resp. Decl. at ¶ 22.
118. The Executive Director of the Commission understood the purpose of the legislator's proposals in	118. Lang Resp. Decl. at ¶ 22.

HB2603 to open dialogue about the issue and to provide a temporary means by which to continue supporting the desire of the electorate by sustaining Arizona's public funding system in the wake of a possible ruling that matching funds are unconstitutional.	
119. The Commission sought language making this "lump sum" approach a temporary measure that would only be implemented if the court ruled them unconstitutional and be immediately repealed should any such decision be reversed on appeal which was not contained in the final version of the bill, however.	119. Lang Resp. Decl. at ¶ 22.
120. One of the most important elements of HB 2603 was the provision that it be repealed after 2010.	120. Lang Resp. Decl. at ¶ 22.
121. The Commission has a duty to ensure that the purposes of the Act are carried out – one of which is to preserve the public	121. Lang Resp. Decl. at ¶ 22.

fisc and another of which is to ensure that public financing remains a viable alternative.	

* * *

DATED: July 17, 2009

Arizona Attorney
General's Office
TERRY GODDARD
MARY O'GRADY
BARBARA A. BAILEY
TANJA K. SHIPMAN

By: s/ Tanja K. Shipman

Attorneys for Defendants

DATED: July 17, 2009

Munger, Tolles & Olson LLP
BRADLEY S. PHILLIPS
GRANT A. DAVIS-DENNY
ELISABETH J. NEUBAUER
PUNEET K. SANDHU

By: s/ Elisabeth J. Neubauer

Attorneys for Defendant-Intervenor

BRADLEY S. PHILLIPS *(pro hac vice)*
Brad.Phillips@mto.com
GRANT A. DAVIS-DENNY *(pro hac vice)*
Grant.Davis-Denny@mto.com
ELISABETH J. NEUBAUER *(pro hac vice)*
Elisabeth.Neubauer@mto.com
PUNEET K. SANDHU *(pro hac vice)*
Puneet.Sandhu@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

MONICA YOUN *(pro hac vice)*
monica.youn@nyu.edu
ANGELA MIGALLY *(pro hac vice)*
angela.migally@nyu.edu
THE BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
161 Avenue of the Americas
New York, NY 10013
Telephone: (212) 992-8158
Facsimile: (212) 995-4550

TIMOTHY M. HOGAN (004567)
ARIZONA CENTER FOR LAW IN THE PUBLIC
INTEREST
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004
Telephone: (602) 258-8850

Attorneys for Defendant-Intervenor
CLEAN ELECTIONS INSTITUTE, INC.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, et al., Plaintiffs, and DEAN MARTIN, et al., Plaintiff-Intervenors, vs. KEN BENNETT, et al., Defendants, and CLEAN ELECTIONS INSTITUTE, INC. Defendant-Intervenor.	CASE NO. CV-08-1550-PHX-ROS (Assigned to the Honorable Roslyn O. Silver) **DECLARATION OF DONALD GREEN IN SUPPORT OF DEFENDANT-INTERVENOR CLEAN ELECTIONS INSTITUTE, INC.'S OPPOSITION TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTION FOR SUMMARY JUDGMENT** (Filed Jul. 17, 2009)

I, Donald P. Green, declare as follows:

1. I submit this declaration in support of Defendant-Intervenor's Opposition to Plaintiffs' and Plaintiff-Intervenors' Motion for Summary Judgment. I have been retained by Defendant-Intervenor to provide my opinions to the Court, including those set forth in this affidavit. I have personal knowledge of the matters set forth here, except as I have indicated. I am being compensated for my services in this action at a rate of $250 per hour.

2. I have spent my entire professional career studying, writing, teaching and lecturing about American politics and the American election system in particular. I am the A. Whitney Griswold Professor of Political Science at Yale University. In addition, I serve as the director of the Yale Institution for Social and Policy Studies, an interdisciplinary policy center. I am currently serving my fifth consecutive three-year term as Director.

3. I received my doctorate in political science from University of California, Berkeley in 1988. My area of expertise lies in campaigns, elections, survey research, research design and statistical analysis.

4. I also have published extensively on, among other things, the topics of campaigns and elections in leading political science journals such as the *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *Electoral Studies*, *Political Research Quarterly*, and *Political Analysis*. Several of my publications focus on campaign finance and use statistical models to estimate the effects of campaign spending. I also co-authored a book entitled *Get Out The Vote: How to Increase Voter Turnout* (Brookings Institution Press, 2008), which reports the results of more than one hundred studies of political campaigns and voter mobilization drives.

5. In 2005, I was elected to the Council of the American Political Science Association. I currently serve on the Board of Overseers of the American National Election Study. My scholarship has won

recognition from the National Science Foundation and substantial financial support from James Irvine Foundation, Pew Charitable Trusts, Smith Richardson Foundation, Harry Frank Guggenheim Foundation, and Russell Sage Foundation. In 2004, I was elected Fellow of the American Academy of Arts and Sciences.

6. At issue in this litigation are, I understand, assertions that the matching fund provisions of the Arizona Clean Elections Act deter nonparticipating candidates from making expenditures beyond the matching funds threshold.

7. It is my opinion, to a reasonable degree of scientific certainty, that candidate spending has not been chilled since the enactment of Arizona's Clean Elections Act.

8. Statistical analysis regarding candidate expenditures in legislative races in Arizona before and after the enactment of the Citizens Clean Elections Act demonstrates that nonparticipating candidates under the current system spend at levels that equal or exceed those observed before the introduction of matching funds.

9. Evidence adduced by both Plaintiffs' expert and Plaintiff-Intervenors' expert has failed to refute these statistical findings.

1. Spending by Independent Expenditure Organizations and Candidates Has Not Been Chilled But Has Increased Since the Enactment of Public Funding

10. I reviewed all legislative candidate expenditures in 1998 and 2006 and examined patterns of spending by nonparticipating candidates in 2006 that were opposed in the general election by at least one participating opponent. Based on the results of my analysis, it is my opinion that legislative candidates have not been deterred from spending over the matching funds threshold and that candidate spending has increased dramatically since the enactment of the public funding system.

11. If matching funds were to deter nonparticipating candidates from making expenditures, as Plaintiffs' claim, one would expect such expenditures to cluster around the level at which matching funds would be triggered. I observed no such clustering at or around the matching fund threshold. Looking at the smooth distribution of these nonparticipating candidates' expenditures, one would not guess that the matching fund threshold was $17,918, because there is no tendency for spending to cluster at or around this figure.

12. Of the 46 nonparticipating candidates facing a participating opponent in the general election in 2006, 39 spent less than $15,000 and therefore never

reached the matching threshold.[1] Just one candidate subject to the $17,918 threshold spent between $15,000 and $26,000. The remaining 6 candidates spent between $26,000 and $149,000.

* * *

20. Much of the rhetorical force behind the notion that matching funds "deter" nonparticipating candidates from spending derives from anecdotes about specific candidates who express misgivings about spending against participating opponents. However, adducing examples of candidates who claim that they do not want to spend for fear of providing matching funds for their competitor in no way establishes that this concern translates into actual changes in what candidates actually do.

21. Plaintiffs' expert, Dr. Marcus Osborn, opines that to a reasonable degree of scientific certainty, matching funds "deter" spending; however, he bases this opinion on anecdotes and speculation about how matching funds might impact candidate spending. Osborn Decl., at 11-28.

22. Such anecdotal evidence is not supported by the data on candidate spending. These anecdotes run counter to statistical trends since the advent of public funding showing increasing amounts of fundraising and spending over time by nonparticipating candidates,

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[1] One candidate, Pete Hershberger, spent $12,415 and was subject to a reduced threshold of $11,945.

even those who face participating opponents. As such, it is my opinion that Dr. Osborn's reliance on anecdotal evidence, in the face of data to the contrary, renders his opinion unpersuasive.

23. Dr. Osborn cites Mr. Michael Miller's 2008 article in *PS: Political Science and Politics* as a basis for his opinion that matching funds chills speech. Osborn Decl. at 11. Dr. Osborn mischaracterizes both the source of Miller's article and Miller's conclusions. Furthermore, Dr. Osborn's wholesale adoption of Miller's methodology overlooks several deficiencies in the Miller article which call the conclusions into question.

24. Dr. Osborn characterizes *PS: Political Science and Politics* as "peer reviewed," but I can say from experience, having published in that journal on more than one occasion, that it is peer reviewed only in the weakest sense of that term. *Id.* This journal essentially publishes brief pieces that are thought to be timely or provocative; serious and extensive pieces of research are redirected to other academic journals.

25. Dr. Osborn also mischaracterizes the findings themselves. For example, Dr. Osborn's declaration describes Mr. Miller's research as finding "that every non-participating candidate felt constrained by the matching funds component of the Clean Elections Act." *Id.*

26. However, Mr. Miller did not survey every non-participating candidate. Instead, he attempted to survey 186 candidates running in the 2006 election

cycle and succeeded in getting responses from 69 of them. According to Mr. Miller's Table 2, 67.6% of his survey sample "accepted Clean Elections Funds," which implies that his sample contains just 22 non-participating candidates. Osborn Decl., Ex. 3 at 528.

27. Dr. Osborn references quotations from Miller's in-depth interviews as evidence of how every non-participating candidate felt constrained by the matching funds component of the act. However, the quotations arise from interviews with just 16 candidates, of whom 4 were nonparticipating candidates. So when Mr. Miller says that "[s]tories like this one were echoed by every candidate who had ever run traditionally against a Clean Elections opponent," he is in fact describing the comments of just 4 candidates. *Id.* at 529.

28. More importantly, when drawing inferences from the Miller study, Dr. Osborn completely overlooks an even more glaring deficiency, namely, the fact that it lacks a control group. Granted, the candidates talk about the strategic "considerations" that they took into account when allocating campaign resources, but this evidence does not establish a causal link between the matching fund system and how candidates actually spent their money. At a minimum, Mr. Miller should have traced the spending and fundraising behavior of these candidates under the new system in comparison with their spending patterns under the old system.

29. Establishing a causal connection between the matching fund provisions and actual campaign spending decisions based on an uncritical reading of interview transcripts is particularly problematic given that Mr. Miller's respondents are sophisticated politicians who clearly understand the policy implications of their complaints about the campaign finance system. These respondents have an incentive to report that their behavior was shaped by the law.

30. Next, Dr. Osborn cites Mr. Miller's data suggesting that between 2002 and 2006 candidates spend at least one-third of their resources in the final week of the campaign. Osborn Decl. at 12. Again, there is no control group. No effort is made to compare this figure to what candidates spent before matching funds went into effect in Arizona or to compare this figure to what candidates typically spend in state legislative races in other places that lack a public financing system. Given that the crescendo of campaign activity culminates on Election Day, it should not be surprising that a sizeable amount of money is raised and spent at that time.

31. Another way to look at the evidence is to note that the fact that two-thirds of resources are *not* spent until the last week of the election cycle, which contradicts Dr. Osborn's assertion that matching funds provisions deter traditional candidates from aggressively communicating with potential voters at the beginning of the campaign because these expenditures trigger matching funds early in the election cycle.

32. It should be noted that Dr. Osborn's claim that matching funds "deter" spending and communication is also at odds with Plaintiff Intervenor's expert Professor Primo's theory that matching funds cause non-participating candidates to spend and fundraise heavily "early in the campaign and late in the campaign." Primo Decl. at 9. Evidently, there is no agreement on how these incentives work theoretically or what it means in terms of dollars to "deter" communication.

33. Dr. Osborn also bases his opinion on the testimony of several Plaintiffs who raise or have raised legal challenges to matching funds. Again, opinions based on an uncritical reading of sophisticated political actors who clearly understand the legal implications of their testimony are dubious. Especially, when all statistical data demonstrates that spending by non-participating candidates has not decreased or clustered around the trigger matching threshold.

34. Dr. Osborn relies on the deposition and trial transcripts of Ms. Maria Weeg and Mr. William Witaker, both Plaintiffs in a legal challenge involving matching funds in another lawsuit, as evidence that matching funds chill the making of expenditures. Osborn Decl. at 17. This may well have been these Plaintiffs' position when trying to prevent an opposing candidate from accessing funds, but there is no evidence that before donating to this race, these Plaintiffs decided to do so based on this presupposition about matching funds.

35. Dr. Osborn also relies on the testimony of Plaintiffs and Plaintiff-Intervenors in the instant case. Osborn Decl. at 18-28. Concluding that there is a causal connection between the matching fund provisions and actual campaign spending decisions based on the testimony of these Plaintiffs is particularly problematic given that Plaintiffs have an incentive to report that their behavior was shaped by the law.

36. Dr. Osborn does reference testimony of witnesses who are not Plaintiffs in this case; however, such testimony is either speculative or says nothing about the extent of this influence or the method by which the extent of this influence has been established empirically. Osborn Decl. at 13-15.

37. Dr. Osborn cites testimony taken in the deposition of Commissioner Lori Daniels. But the quotations in Dr. Osborn's declaration merely quote Commissioner Daniels as saying that the availability of matching funds "can influence" a candidate's expenditures. Similarly, she says that the availability of matching funds "can influence" whether an independent expenditure is made. Osborn Decl. at 13. Beyond admitting the law's potential to influence behavior; her testimony says nothing about the extent of this influence or the method by which the extent of this influence has been established empirically. Furthermore, Commissioner Daniels has testified that her own fundraising and spending decisions were not influenced by matching funds and that she does not believe in publicly funded elections. Ex. 1 Daniels Dep. 74:3-75:3; 89:18-90:9.

38. The same goes for quotations attributed to Todd Lang and Representative Lujan. Dr. Osborn' quotes Mr. Lang as saying "I suppose a person might refrain in contributing if they thought it might trigger matching funds." Osborn Decl. at 14. However, this statement is too speculative to base any causal connection between matching funds and candidate spending.

39. Representative Lujan is quoted as saying "I would agree with that, yes." in response to leading questions asked by Plaintiffs' counsel. Osborn Decl. at 15. In my opinion such statements are insufficient to establish the causal connection that Dr. Osborn's seeks to establish, especially in light of statistical evidence to the contrary.

III. Dr. Primo's Statistical Analysis Does Not Demonstrate that Matching Funds Impact the Timing of Expenditures Made by Privately Funded Candidates

40. Plaintiff-Intervenor's expert, Dr. David M. Primo, alleges that the current system of matching funds compels "rational" candidates to change the timing of their fundraising and campaign expenditures to minimize the effectiveness of any matching funds that are awarded. He hypothesizes that "in the primary, a candidate may want to wait until the last two or three days before the primary election to unleash a barrage of spending." He also hypothesizes that in the general election "as the campaign draws

to a close, a candidate may wait to raise money from donors until the very last minute, or if expenses can be incurred on credit, until after the general election is completed." Primo Decl., at 3.

41. I disagree with these claims on both empirical and theoretical grounds.

42. The statistical evidence that Professor Primo adduces to support the claim about timing is flimsy and unpersuasive. First, the analysis suffers from a flawed research design. The regression analysis he offers as evidence cannot plausibly isolate the causal effect of the public financing system. Even if I were to put aside this flawed design, a careful examination of this statistical evidence suggests just the opposite conclusion: the system of matching funds has little or no effect on the timing of spending or fundraising by nonparticipating candidates who face participating opponents.

43. From a theoretical standpoint, this result is not surprising. The strategic incentives associated with the matching fund system are overshadowed by other strategic incentives that impel nonparticipating candidates to raise and spend beyond the matching threshold.

44. Before examining the statistical results of this comparison, I examine Professor Primo's research design. Professor Primo's analysis compares two types of candidates. Type 2 candidates are "privately funded candidates who face at least one publicly financed opponent who receives matching funds as a result of a

privately funded candidate's spending or fundraising behavior." Type I candidates are "privately funded candidates who either face only privately funded candidates or face publicly financed opponents, none of whom receive a match in the election." Primo Decl. at 5.

45. This comparison is further restricted to candidates who run in districts that are contested by major party candidates who raise or spend at least some nonnegative amount in each reporting period. In constructing this comparison, his aim is to isolate the causal influence of strategic incentives created by Arizona's campaign finance system. It is my opinion that Professor Primo's comparison between these types of candidates is overly simplistic and does not lend itself to reliable causal inferences.

46. The key assumption underlying this comparison is that in any given election cycle the two types of candidates are identical except for the strategic incentives presented by matching funds. In the appendix of his report, Professor Primo relaxes this assumption slightly by controlling for party and whether the candidate held prior office. *See* Primo Decl., app. C. Restated, his key assumption is that in any given election cycle, candidates of the same party and prior office-holding experience are identical except for the strategic incentives presented by matching funds.

47. This dubious assumption is backed up by neither theory nor evidence. Candidates are not

randomly assigned to districts or to participating or nonparticipating opponents. On the contrary, their own decision to participate or not is presumably based on strategic and ideological considerations that are unmeasured in Professor Primo's regression model. Much of Professor Primo's published work focuses on modeling the strategic incentives that political actors confront; here, however, his analysis ignores the fact that candidates may strategically enter certain races and not others and the fact that they may base their decision to participate in the public funding system on unobserved factors that may be correlated with their ability to raise and spend campaign funds.

48. It is my opinion that no refereed political science journal would accept the kind of simplistic comparison that Professor Primo devises, and for good reason: given the potential for unobserved factors to throw off this comparison, this type of analysis does not lend itself to reliable causal inferences.

49. Putting aside this design defect, there is nothing in Professor Primo's statistical presentation that establishes the claim that the prospect of matching funds fundamentally alters the way in which candidates raise and spend money. The statistical results of Dr. Primo's analysis are not statistically significant, even by the most generous interpretation of that term.

50. The essence of Professor Primo's argument is that the gap between the two types of candidates

grows larger as we move from the middle of the election season to the end. However, the statistical test that he performs does not test this hypothesis. Instead, he tests the hypothesis that at a *given point in time*, the two types of candidates raise and spend different amounts. This is an elementary error and one that grossly overstates the degree of support for his claim that incentives cause the gap between Type 1 and Type 2 candidates to widen at the end of the campaign.

51. In his rebuttal report, Professor Primo acknowledged that an implication of his argument is that the gap between the two types of candidates *grows larger* as we move from the middle of the election season to the end and conceded that his analysis did not demonstrate this pattern. Ex. 2 Primo Rebuttal Report, dated Apr. 27, 2009, at 8.

52. Additionally, while convention dictates that statistical significance be accorded to patterns that would obtain by chance less than 5% of the time, Professor Primo loosens this standard to 10%. Primo Decl. at 7-8. Moreover, because he calculates one-tailed tests despite the lack of strong prior evidence that the gap between spending by the two types of candidates could only go in one direction, he effectively loosens the standard of statistical significance to 20%. Even with this permissive standard, I find that his results are not statistically significant when the calculations are performed properly.

53. I have recalculated the significance test in an appropriate manner, and the results are quite clear. There is no support for the claim that the gap in spending between the two types of candidates changes significantly over time.[1] In order for a statistical effect to be dubbed "statistically significant," it must have less than a 5% probability of occurring by chance. In this case, the probability of seeing gaps in spending at least as large as what the data actually show is never less than 39.9%. In other words, the pattern of results that Professor Primo presents are about what we would expect to see simply by chance if the two types of candidates were unaffected by matching fund incentives.

54. From a theoretical standpoint, this result is not surprising. The argument that candidates alter their fundraising and spending patterns in light of

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[1] My calculations are based on the following procedure. Using the results presented in Professor Primo's Appendix C, I conducted a series of meta analysis regression models. These models test whether the coefficients in his Appendix change systematically over time, or instead change in ways that could be attributed to chance variation. I considered a wide array of interpretations of Professor Primo's hypothesis that Type 2 candidate raise/spend more than Type 1 candidates "early in the campaign and late in the campaign." I first operationalized "late" by examining whether the coefficients after PR1 and GE1 are predicted by a linear time trend. Next, I consider whether a dummy variable for the last period predicts coefficients for periods after PR1 and GE1. Finally, I considered a quadratic specification in which the coefficients are regressed on time and time squared in order to test whether the results dip in the middle period.

the incentives that Professor Primo identifies is based on an incomplete account of the incentives that candidates face during a campaign.

55. Candidates who choose to run based on private contributions may place little emphasis on the timing of their fundraising and spending activity given the many other objectives that they are pursuing at the same time. For example, candidates have strong incentives to raise money as quickly and as vigorously as possible, because fundraising tends to be an activity that builds on itself.[3] Putting off fundraising may be problematic because it impairs one's ability to convince current donors that a growing number of fellow donors have recently contributed. Professor Primo's rendering of the strategic logic of the campaign finance system ignores the strategic imperatives of the broader campaign. This may explain why his statistical results are so flimsy: the pressure to raise and spend money late in the campaign is evidently too weak to be detected even when studying the behavior of candidates in hundreds of election campaigns.

56. Even if I were to set aside these fundamental design defects and the statistical insignificance of his findings, the fundraising differences between Type 1 candidates and Types 2 candidates is quite small

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[3] Krasno, Jonathan S., Donald Philip Green, and Jonathan A. Cowden. 1994. The Dynamics of Campaign Fundraising in House Elections. *Journal of Politics* 56(2): 459-474.

substantively. The key finding, according to Professor Primo, is that Type 2 House candidates fundraise substantially more than Type 1 candidates in the final GE5 period. Primo Decl. at 11. But the anti-log of 3.97 is $52.98, while the anti-log of 5.58 is just $265, so the difference in fundraising amounts to a meager $212.02. In the Senate, the corresponding figure for GE5 is $54.92. So even if all of the difference in fundraising were traced to the incentives created by the campaign finance system, the political consequences are negligible.

IV. Campaign Contribution Limits are Insufficient to Eliminate the Reality or Appearance of Corruption

57. Dr. Osborn asserts that public funding of campaigns is unnecessary if the goal is to limit the appearance of corruption. In his view, disclosure and contribution limits are sufficient, because, according to his statistical analysis, contribution limits have the effect of "reducing interest group influence". Osborn Decl. at 36.

58. Dr. Osborn's thesis that contribution limits are sufficient to prevent the reality or appearance of corruption runs counter to the testimony given by those close to the fundraising process. Several deponents pointed out that lobbyists are able to skirt campaign contribution limits and curry favor with legislators by directing donors to the candidate or by

"bundling" contributions. Mr. Querard talks about lobbyists who say:

> hey, I'd like to put together an event for you and that lobbyist may actually take care of a lot of the work involved in the fundraiser to where you may be calling your Rolodex of your friends and the people you know or all the business cards you've collected at the Capitol and that may be your contribution . . . Ex. 3 Querard Dep. 43

59. This point is echoed by Mr. Smolden, who notes that hosting a fundraiser is one way that lobbyists assist candidates in raising money and by Mr. Martin, who recalls how lobbyists on his fundraising committee collected donations on his behalf from their clients. Ex. 4 Smolden Dep.10:6-10:23. Ex. 5 Martin Dep. 64. Although each of the campaign donations falls below the contribution threshold, the aggregate amounts raised by lobbyists can be considerable, as Ms. Lubin explains:

> Typically, the lobbyist makes a personal donation. Their client, the principals often make donations to candidates. And in addition, they hold fundraisers for that candidate which may include employees, members of the board of that organization, or supporters. And it's usually – even though they're individual checks, it will become obvious to the candidate whether by looking at their own campaign finance report or by having the lobbyist tell you, oh, we raised $10,000 for

you tonight. So some people call it bundling. Ex. 6 Lubin Dep, 19.

60. Bundling apparently amplifies the influence of lobbyists. As Mr. Hoffman explains, lobbyists gain special access to legislators who are beholden to them for campaign resources. In my view, the threat of corruption is very real under these conditions. Contrary to Dr. Osborn's assertions, contribution limits alone do not alleviate the threat of corruption because the limits are easily circumvented by bundling. Ex. 7 Hoffman Dep. 20.

61. Dr. Osborn states that under the Arizona Clean Elections Act lobbyists can bundle $5 contributions and therefore, the same opportunity for lobbyists to exert undue influence over publicly financed candidates exists under a publically funded regime. Osborn Decl. at 39.

62. In my opinion, the threat of corruption associated with the bundling of small contributions in a public funding system does not compare with the threat of corruption from bundling large contributions in a private system.

63. Privately financed candidates are beholden to lobbyists who bundle tens of thousands of dollars in $300 contributions because it is difficult and costly to raise that kind of money. Candidates appreciate the efforts of lobbyists because the candidates could not easily raise this type of money without bundlers.

64. Under a public financing system, many people, including candidates, can orchestrate the kind of activity it takes to collect the requisite number of $5 contributions.

65. In his supplemental report, Dr. Osborn offers an additional argument. Dr. Osborn asserts that the lobbying efforts of the Citizens Clean Election Commission create the appearance of corruption:

> The presence of a lobbying effort from a campaign regulatory agency creates the potential for questions from both traditional and publicly financed elected officials that there may be a relationship between the policy positions they take on election issues and their future regulatory treatment. Osborn Decl. at 33-34.

66. No evidence is adduced to show that the CCES in fact exercises its discretion in a discriminatory fashion. And no evidence is adduced to suggest that legislators, interest group leaders, or the public believe the CCES abuses its authority or trades legislators' support for regulatory favors. In other words, Dr. Osborn offers nothing beyond his own assertion that there is "the potential for questions."

V. Studies By Amici Center for Competitive Politics Are Riddled With Defects

67. I have reviewed the two studies cited by Amici Center for Completive Politics and their Amicus Brief. It is my opinion that the designs of the

analysis upon which the studies are based are fundamentally flawed and cannot support the purported conclusions. The evidence generated by these studies is of little value that cannot be said to support the broad ranging conclusions that are offered.

68. The CCP cites to the study "Special Interests, Partisan Pouts, and the Usual Suspects: A Study of Donors to New Jersey's "Clean Elections" Candidates in 2007" to support the proposition that "Clean Elections" programs yield no anti-corruption or anti-appearance of corruption benefits. Br. for Center for Competitive Politics at 14-15.

69. The CCP bases its findings on responses to questionnaires that were sent to donors in two legislative districts who contributed a qualifying contribution to at least one candidate.

70. Based on these responses, the CCP claims that "the donor group most supportive of 'clean elections' was most likely to believe that their own clean legislators favored party and special interest over constituents interests" and that "organized interest groups supplied nearly half of all qualifying contributions to 'clean elections' candidates." Sean Parnell, Laura Renz & Sarah Falkenstein, *Special Interests, Partisan Pouts, and the Usual Suspects: A Study of Donors to New Jersey's "Clean Elections" Candidates in 2007* at 7, 19 (Feb. 2009), *available at* http://www.campaignfreedom.org/docLib/20090223_SR1NJ.pdf.

71. It is my opinion that both the low response rate, the flaws in the crafting of the questionnaire

and more fundamentally the lack of a control group render the results entirely unpersuasive.

72. According to the study, 4864 questionnaires were sent out to two legislative districts. Only 798 responses were returned. *Id.* at 23. This is a response rate of 16%, which is well below the 40% or 50% response rate that is the traditional response standard needed in order to draw reliable descriptive inference.

73. Mailed questionnaires are notorious for eliciting response from the most interested and opinionated respondents, so we can draw no secure inferences about the average donor.

74. Although the authors characterize the donors as interest group members, in fact the survey instrument asks respondents they or their family members are members from a variety of groups.

75. Finally, even if the survey were perfectly executed, there is a deeper flaw, namely the fact that we are not comparing people who are in publicly funded environment with those in a privately funded environment. Nowhere does the report explain why they decided not to use a more traditional control group design or how inferences can be drawn in the absence of a control group design.

76. The conclusions drawn by the author are unsupported by the data themselves.

77. For example, the CCP claims that clean elections programs have yielded no benefit in reducing

the appearance of corruption because "the donor group most supportive of 'clean elections' was most likely to believe that their own clean legislators favored party and special interest over constituents interests." *Id.* at 7. There are two flaws here. The first is that the authors are not comparing respondents operating in a publically funded system with their counterparts in a privately funded system. As a result there is no metric by which to compare the responses that are offered in this survey. Instead, the authors are impressed with the sheer number of respondents who reply in a certain way without telling us how they would respond in a different campaign finance system. This is an elementary research error.

78. The CCP also claims that the survey results demonstrate that "organized interest groups supplied nearly half of all qualifying contributions to 'clean elections' candidates." *Id.* at 19.

79. There are a number of problems with this claim. First, the unrepresentative sample, attenuated as it is by non-responsiveness bias, does not enable us to get an accurate characterization of qualifying contributors. But even if it did, the contributors in this sample are not organized interest groups. They may be reporting that their families are members. And even if the respondent themselves were members, the implication seems to be that they are akin to lobbyists which is simply not reflected in the data themselves. Nothing in the questionnaire asks respondents about their lobbyist activity.

80. The CCP's second study, "Do Taxpayer-Funded Campaigns Actually Save Taxpayer Dollars?," also suffers from debilitating design flaws. The CCP based its conclusion that public funding programs do not reduce government spending by comparing the growth in spending in Maine and Arizona to the US as a whole. *See* Sean Parnell, *Do Taxpayer-Funded Campaigns Actually Save Taxpayer Dollars?* (Sept. 2008), *available at* http://www.campaignfreedom.org/docLib/20080930_Issue_Analysis_4.pdf.

81. The quality of this research design is akin to what one would expect to find in an undergraduate seminar paper. The study compared state spending and tax rates over time but controlled for no other factors. The CCP turned a blind eye to a myriad of other state-level variables such as population size, economic conditions, the age distribution of the population, and budgetary commitments to entitlement programs, each of which could explain state budget growth. This simplistic methodology cannot possible tells us whether campaign finance laws had an effect on state spending.

VI. Corruption Tends to Emerge in Settings That Lack Electoral Competition

82. A lack of electoral accountability is one of the most important determinants of corruption in politics. Historically, the political environments most conducive to corruption have been cities, where party machines dominated elections at all levels, and the

South prior to the Voting Rights Act, where the Democratic Party for decades held a monopoly on state and local power.

83. The inverse relationship between electoral accountability and corruption arises due to the perverse incentives that are created when public officials are insulated from public reprisal. Incumbents in this situation have an incentive to cut ongoing side-deals with those offering quid pro quo exchanges. Lobbyists have an incentive to offer such exchanges because entrenched incumbents make reliable long-term trading partners. The threat that such exchanges will be exposed is diminished by efforts on the part of incumbents and their allies to undermine or co-opt potential challengers.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of July, 2009 at New Haven, Connecticut.

/s/ Donald P. Green
Donald P. Green

[Certificate of Service Omitted In Printing]

INSTITUTE FOR JUSTICE
Timothy D. Keller (019844)
Jennifer M. Perkins (023087)
398 S. Mill Avenue, Suite 301
Tempe, AZ 85281
P: 480-557-8300/F: 480-557-8305

INSTITUTE FOR JUSTICE
William R. Maurer (WSBA 25451)[1]
101 Yesler Way, Suite 603
Seattle, WA 98104
P: 206-341-9300/F: 206-341-9311

Attorneys for Plaintiff-Intervenors

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,

Plaintiffs,

and

DEAN MARTIN, *et al.*,

Plaintiff-Intervenors

vs.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, *et al.*,

Defendants,

Civil Action No. 08-1550-PHX-ROS

PLAINTIFF-INTERVENORS' RESPONSE TO DEFENDANTS' AND DEFENDANT-INTERVENOR'S JOINT STATEMENT OF UNDISPUTED FACTS

(Filed Jul. 17, 2009)

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[1] Admitted *pro hac vice*

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant-Intervenor.

* * *

40. Plaintiff-Intervenors do not dispute this fact.

* * *

SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION
GOLDWATER INSTITUTE
Nicholas C. Dranias (168528)
500 E. Coronado Rd.
Phoenix, AZ 85004
P: (602) 462 5000 F: 602-256-7045
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH; NANCY MCLAIN; AND TONY BOUIE,

Plaintiffs,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, DONALD LINDHOLM and LORI S. DANIELS, in their official capacity as members of the ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION,

Defendants.

Civil Action No. CV-081550-PHX-ROS

Hon. Roslyn O. Silver, presiding

PLAINTIFFS' RESPONSE TO DEFENDANTS/ DEFENDANT-INTERVENOR'S JOINT STATEMENT OF FACTS AND STATEMENT OF FACTS IN OPPOSITION TO DEFENDANTS/ DEFENDANT-INTERVENOR'S MOTIONS FOR SUMMARY JUDGMENT

(Filed Jul. 17, 2009)

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40. Plaintiffs dispute this paragraph for the following reasons. The asserted fact and supporting evidence are irrelevant and inadmissible under Fed. R. Evid. 401 and 402. *See generally Democratic Party*, 578 F. Supp. at 825, 827, 830, affirmed in relevant part by *Federal Election Comm'n*, 470 U.S. at 499-500. A First Amendment analysis of speech regulations is not properly based on aggregate statistical analysis. Free speech is an individual right, not a right of the collective. Even if shutting down one bookseller resulted in those that remained selling more books, that would hardly justify closing bookstores. Moreover, in the absence of evidence of what would have happened to aggregate expenditure levels in the absence of Matching Funds, there is insufficient foundation for such evidence to have any relevancy – claiming causation would merely advance the fallacy of *post hoc ergo proctor hoc*. Therefore, the asserted statement and supporting evidence do not make any fact that is of consequence to the determination of this action more probable or less probable than it would otherwise be. The asserted fact and supporting evidence are also inadmissible for being prejudicial, confusing and a waste of time under Fed. R. Evid. 403. This is because Green's premise that candidate expenditure clustering should exist between $15,000 and $26,000 is unsupported by any scientific reasoning, and premised on a failure to consider candidate anticipation of independent expenditures, which might trigger matching funds. Green's findings, which show thirty-nine candidates spent less than $15,000, are entirely consistent with

Plaintiffs' theory that candidates engage in widespread behavior to avoid triggering matching funds. And if the entirety of Green Dec., Ex. A is being offered into evidence as expert testimony, it should be held inadmissible under Fed. R. Evid. 601 and 702 due to Green's failure to follow a scientific methodology as evidenced by: 1) his conceded lack of experience and expertise in Arizona campaign finance law, candidate and political action committee consulting, 2) his failure to show how his findings and opinions naturally and directly result from his independent research or otherwise subject his findings to peer review, 3) his deliberate refusal to read evidence he purports to critique, 4) his deliberate refusal to consider all relevant evidence, 5) his failure to formulate any null hypothesis, 6) his embrace of speculation and failure to specify which findings or opinions were offered to a reasonable degree of scientific certainty or otherwise establish that they relate to his fields of expertise, and 7) his admission that his report does not establish an affirmative case of the sort he would subject to peer review. (PSFO, ¶¶ 208-25.) *Daubert*, 509 U.S. at 593.

* * *

TERRY GODDARD
Attorney General
Mary R. O'Grady (011434)
Solicitor General
Barbara A. Bailey (018230)
Tanja K. Shipman (025205)
Assistant Attorneys General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-3333
Facsimile: (602) 542-8308
Attorneys for Defendants Arizona Secretary of State and Citizens Clean Elections Commission

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JOHN MCCOMISH, *et al.*,
Plaintiffs
and
DEAN MARTIN, *et al.*,
Plaintiff-Intervenors,
v.
KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; *et al.*,
Defendants,
and
CLEAN ELECTIONS INSTITUTE, INC.,
Defendant-Intervenor.

No. CV08-1550-PHX-ROS

DECLARATION OF TODD F. LANG IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' MOTIONS FOR SUMMARY JUDGMENT

(Assigned to the Honorable Roslyn O. Silver)

(Filed Jul. 17, 2009)

I, Todd F. Lang, declare:

1. I am the Executive Director of the Arizona Citizens Clean Elections Commission and I make this declaration based on my personal knowledge of the facts set forth below.

2. The Act creates a voluntary system of public funding in Arizona for state and legislative offices under which matching funds are used as a means by which to distribute funds to particular participating candidate if certain conditions are met. A.R.S. §§ 16-940, *et seq.* (the "Act").

3. A.R.S. § 16-951(A) provides that matching funds are issued to a participating candidate in the primary election when a traditional candidate "has made expenditures during the election cycle to date exceeding the original primary election spending limit, *including any previous adjustments.*" (Emphasis added.) The original primary spending limit is capped at three times the spending limit and, as matching funds are issued from various sources, the eligibility for matching funds becomes adjusted.

4. To the extent independent expenditures trigger matching funds they are aggregated toward the cap on the adjusted spending limit under A.R.S. § 16-952(E) but do not affect whether and how much a traditional candidate's expenditures (in the primary) or contributions (in the general) trigger matching funds beyond making any such expenditures or contributions moot because the participating candidate

has already received the maximum allowable matching funds under the Act.

5. Should an independent expenditure fall within the requirements of A.R.S. § 16-958(D), a person making an independent expenditure related to a particular office must file reports "identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat." These reports are among the bases for the Commission's determination under the Act that matching funds should be allocated.

6. Participating candidates may only spend public funds to benefit his or her own campaign and any "common" advertising would necessarily have to be paid for on a pro-rated basis. *See* A.R.S. § 16-948(C) and Commission Rule R2-20-702(A). (A true and correct copy of Commission Rule R2-20-702 is attached hereto as Exhibit A.)

7. A traditional candidate that triggers matching funds is not involved in the dissemination of any message that may or may not be created by the participating opponent who receives those matching funds. There is no requirement in the Act that the traditional candidate must use her personal resources to distribute or serve as a conduit for any communication opposing her candidacy.

8. Pursuant to A.R.S. § 16-952(A), an amount "equal to any excess of the reported amount over the primary election spending limit as previously

adjusted, less six per cent for a nonparticipating candidate's fund-raising expenses and less the amount of early contributions raised for that participating candidate for that office as prescribed by § 16-945" was paid to the participating candidate in the 2008 District 6 Republican primary election race.

9. On or about August 7, 2008, matching funds in the amount of $13,665.64 were issued to candidate Frank Schmuck. (A true and correct copy of the Primary Funding Overview Reports for the campaigns of candidates Andy Swann, Jeff Dial and Frank Schmuck in the Republican primary race for Arizona State Representative in District 20 are attached hereto as Exhibit B.)

10. On August 28, 2008, candidate Jeff Dial had received the maximum allowable primary matching funds under section 16-952(E) of the Act.

11. Representative John McComish did not contact Commission staff or raise any formal or informal objection or complaint with the Commission regarding matching funds issued in the 2008 District 20 House of Representatives race as a result of any independent expenditure.

12. Representative Nancy McLain's expenditures triggered only $833.62 in matching funds to Doris Goodale on or about August 27, 2008. (A true and correct copy of the primary funding overview report of Doris Goodale is attached hereto as Ex. C.)

13. In 2006 and 2008, Representative Jim Weiers ran as a traditional candidate in District 10 and his participating opponents in both of those general election races received the maximum allowable funds permitted under the Act. (A true and correct copy of the election disbursements for opponents of Rep. Weiers in the 2006 and 2008 general elections are attached hereto as Ex. D.)

14. Traditional candidates have far fewer restrictions on their campaign finance activities. Traditional candidates are free to accept contributions from political action committees (PACs), but participating candidates may not. Traditional candidates can use personal funds without limit and can spend personal funds at any time during the campaign. Traditional candidates are free to raise and spend as much money as they are able and willing to do. Traditional candidates can raise money at any time in the campaign, while participating candidates must plan and budget carefully because if they run out of money, there is no provision that permits them to raise additional funds for an unforeseen expense.

15. Several traditional and participating candidates have endorsed each other's candidacies in recent Arizona elections. To the extent a participating candidate has spent public money in order to benefit another campaign and not their own campaign, and it was brought to my attention, the participating candidate was subject to an enforcement action.

16. A "slate card" provides information about the voting record or position on a campaign issue of three or more candidates, under A.R.S. §§ 16-901(5)(b)(v) & 16-901(8), and is not an considered an expenditure or contribution to a candidate's campaign. These "slate cards" are issued by political parties to promote candidates who are members of the particular political party and are generally an attempt to "guide" or provide information to voters. The inclusion of particular candidates on a "slate card" does not have anything to do with whether those candidates are campaigning together or on a "team."

17. In order to qualify for public funding under the Act, a candidate must collect a certain number of $5 qualifying contributions but there is no requirement that a candidate wishing to qualify for funding collect an initial sum of "seed money" or early contributions.

18. The relevant Arizona statutory provisions pertaining to the requirement that a candidate obtain a certain number of qualifying signatures to qualify for the ballot is contained in A.R.S. §§ 16-321 *et seq.* and not in the Act.

19. I do not know what plaintiffs mean by the term "reverse targeting" and I have not been involved in any Commission staff recommendation about whether "reverse targeting" has been used in an Arizona state election. In the 2008 election cycle, there were several signs created by Jim Torgeson which, in my opinion, were clearly meant to undermine the

candidates identified on them by associating those candidates with messages meant to discourage voters from electing those candidates. The messages included statements that a candidate "supports illegals" or "they promised to raise taxes help them keep the promise." Representative Waters was running in a very conservative district and Mr. Torgeson had a grudge against Representative Waters and senate candidate Maish and had indicated that he was going to make sure that Representative Waters and senate candidate Maish did not get elected. (A true and correct copy of the Minutes of the October 10, 2008 Commission meeting are attached hereto as Exhibit E.) No candidate received any matching funds as a result of the sign identified as exhibit JM5 in Representative McComish's declaration.

20. No matching funds were paid by the Commission as a result of a press release issued by Equality Arizona during the 2008 Republican primary for the senate seat in District 22 which identified participating candidate Farnsworth. The Commission's records indicate that candidate Farnsworth "maxed out" on the amount of matching funds he could receive under the Act on August 14, 2008. I am also not aware of any request made by candidate Farnsworth to the Commission for matching funds as a result of that press release.

21. The signs identified in Ruiz Depo. Ex. 8 (D01036 *et seq.*) were signs posted by Rep. Quelland during his candidacy which were not found to be in violation of the Clean Elections Act because the

Commission determined that they were posted outside of his district and that they were advertisements for his numerous business ventures. (A true and correct copy of the Minutes of the August 26, 2008 are attached hereto as Exhibit F at 18-34.)

22. The Commission supported the recent proposals made by Representatives Chad Campbell (a traditional candidate in 2008), Kyrsten Sinema (a participating candidate in 2008), Michele Reagan (a traditional candidate in 2008), David Gowan (a participating candidate in 2008), Andrew Tobin (a traditional candidate in 2008), and Rich Crandall (a participating candidate in 2008) in HB2603. I understood the purpose of the legislator's proposals in HB2603 to open dialogue about the issue and to provide a temporary means by which to continue supporting the desire of the electorate by sustaining Arizona's public funding system in the wake of a possible ruling that matching funds are unconstitutional. Indeed, the Commission sought language making this "lump sum" approach a temporary measure that would only be implemented if the court ruled them unconstitutional and be immediately repealed should any such decision be reversed on appeal. That language was not contained in the final version of the bill, however. Instead, one of the most important elements of the bill is the provision that it be repealed after 2010. The Commission has a duty to ensure that the purposes of the Act are carried out – one of which is to preserve the public fisc and another of which is to ensure that public financing remains a viable

alternative. Implementing the "lump sum" approach to public funding proposed in HB2603, however, would be a challenge in the long term under the Act without some alteration to the means by which the Act is funded because of the high cost involved in making those large payments to all candidates who choose to participate in the public funding system (even though not all candidates may need to use the sum proposed to be disbursed). Additionally, because it would be impractical for the "lump sum" approach to provide initial disbursements that were equal to the current maximum amount candidates can receive in matching funds, candidate participation rates would likely decrease as compared to the current system that has matching funds.

23. The Commission staff has drafted a rule that will be presented to the Commission for their consideration and possible preliminary approval at the July 30, 2009 meeting that seeks to eliminate any perceived financial advantages in establishing a "team" of participating and traditional candidates in races involving two or more seats. The rule is not final, but would require a participating candidate to forgo matching funds triggered by another candidate if she intended to engage in coordinated campaign messages or expenditures with the traditional candidate that triggers matching funds. Alternatively the participating candidate could accept the matching funds, but would then be barred from coordinated expenditures with the traditional candidate that triggers the matching funds.

24. When the Commission determines that matching funds should be awarded to a participating candidate as a result of an unreported independent expenditure, it does not have the discretion to award matching funds only to the candidate that reported or requested matching funds. Once it has been determined that matching funds are warranted under the terms of the Act, the Commission "shall" award those funds to eligible candidates. *See* A.R.S. § 16-952.

25. On at least two occasions in the over ten years of the Act's existence, the Commission has taken action to remove two individuals from office – David Burnell Smith and Doug Quelland – only after such individuals were found after investigation to have violated material provisions of the Act. Further, Mr. Smith challenged the Commission's decision before the Office of Administrative Hearing and the Arizona Courts and the Commission's determination was upheld. Representative Quelland is currently exercising his right to challenge the Commission's determination and is scheduled to present his case before the Office of Administrative Hearings in the beginning of August. In other words, both individuals have been or are currently afforded the benefit of full protection and due process under applicable law.

26. Neither myself nor my staff is aware of any entity that provides goods or services on credit in the "ordinary course of business" so that a traditional candidate could take advantage of the exception at A.R.S. § 16-901(5)(b)(xii).

27. The Commission does not label non-participating candidates "dirty," and I am unaware of any evidence that any practice or procedure by the Commission has created a perception that non-participating candidates are "dirty." In fact the Commission refers to non-participating candidates as "Traditional" and clean candidates as "Participating" so that both types of candidates are treated with a non-judgmental label.

28. On September 5, 2006, Commission staff received a complaint from participating candidate Len Munsil's campaign alleging that certain phone calls characterized as a "push poll" were targeting Republican voters in Maricopa County and that they constituted an independent expenditure against the Munsil campaign. Opposing gubernatorial candidate Don Goldwater opposed issuing matching funds and accused Mr. Munsil's campaign of having engineered this "push poll." After investigation, I recommended that the Commission issue matching funds to the Munsil campaign on the basis of these "push polls" in an amount of $80,000. This amount was a discount of a calculation based on the 183,811 votes cast by Maricopa County residents in the 2002 Republican primary by $0.72 (the estimated cost of a call) which produced a figure of $132,343.92. The Commission voted to award the Munsil campaign $80,000 in matching funds on September 7, 2006.

29. Voter Awareness Studies are sponsored by the Commission in order to get a more meaningful understanding of the Commission's education efforts.

Voters who had never heard of the Act or the Commission were "screened" or not asked further questions because they could not provide any feedback on the effectiveness of the public funding education program or provide any opinions about the public funding program because they do not know what it is – which was the sole purpose of these surveys.

30. In the 2008 election cycle, the Victory 2008 PAC made its independent expenditure in opposition to David Stevens' candidacy prior to the time when the Commission had made a determination about whether or not to permit candidate Stevens to receive matching funds.

31. Participation in Arizona's public funding system created by the Act has increased every year since the first year of the system's implementation in 2000. (True and Correct copies of Commission Annual Reports from 2000 through 2008 are attached hereto as Ex. G.)

I declare under penalty of perjury under the laws of the United States that the foregoing asserts of fact are true and correct.

Executed on July 17, 2009, in Phoenix, Arizona.

/s/ Todd F. Lang
Todd F. Lang

491280

Case No. _____

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH, NANCY MCLAIN,
and TONY BOUIE,
Plaintiffs-Appellees,

vs.

KEN BENNETT, in his official capacity,
et al,
Defendants-Appellants.

DECLARATION OF State Senator Jack Harper IN SUPPORT OF MOTION TO VACATE STAY AND IN OPPOSITION TO ENTRY OF APPELLATE STAY

(Filed Jan. 29, 2010)

Appeal from the United States District Court for the State of Arizona Case No. CV-081550-PHX-ROS, Hon. Roslyn O. Silver, presiding

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1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a candidate for House of Representatives of the State of Arizona. I am familiar with

Arizona's Clean Elections Act and how matching funds are designed to be triggered by campaign speech in the form of campaign expenditures or contributions. I intend to run as a "traditional candidate," i.e. as a candidate supported by voluntary private contributions, not government subsidies.

3. The Arizona Clean Elections Act matching funds trigger mechanism forces the exercise of First Amendment rights, namely the right to contribute to a political campaign and the right to expend money in support of a political campaign, to disseminate financial resources to competing candidates who are participating in public financing ("participating candidates"). Thus, matching funds cause the exercise of First Amendment rights by one person to disseminate hostile speech by another. Therefore, matching funds impose a state-created negative consequence, punishment, "cost," or competitive disadvantage on traditional candidates, like myself. This punishment is forced upon me and others by the State as a direct result of the exercise of First Amendment rights in contributing to my campaign and in spending funds in support of my campaign and its message. The mere existence of the threat of matching funds in the 2010 election cycle, therefore, punishes and chills my supporters and **I** [me] [NCD] in exercising our First Amendment rights.

4. Prior to deciding to run for the Arizona House of Representatives, I analyzed the Honorable Judge Roslyn Silver's two prior decisions dealing with the merits of Plaintiffs' challenge to the matching funds

component of Arizona's Clean Elections Act and the impact of *Davis v. FEC*, 128 S. Ct. 2759 (2008). Based on the district court and Supreme Court's stated reasoning and rulings, I formed the belief and opinion that matching funds under the Clean Elections Act were unconstitutional and that the district court and Supreme Court would certainly enjoin them eventually. Accordingly, in reliance upon the district court and Supreme Court's cogent and clear reasoning, on January 1st 2010, I decided to run as a traditional candidate for the 2010 election cycle.

5. My reliance upon the belief and opinion that matching funds under the Clean Elections Act were unconstitutional was further confirmed by the entry by Judge Silver of a permanent injunction striking down the matching funds component of Arizona's Clean Elections Act on January 20, 2009 [10] [NCD], which I was briefed on promptly after issuance.

6. As a traditional candidate for the 2010 election cycle, and in reliance upon the unconstitutionality of matching funds, I have raised more than $7000 in contributions to my committee. My candidate committee has incurred expenses of more than the amount allowable to raise in "early-seed money", in reliance upon the unconstitutionality of matching funds. I cannot refund enough contributions to join the public funding system.

7. If Judge Silver's temporary stay on the enforcement of her permanent injunction were not vacated or if it were extended to cover the 2010

election cycle, allowing matching funds to be issued, I would suffer irreparable harm consisting of immediate difficulties raising contributions from otherwise willing supporters because of the deterrent effect of matching funds. Simply put, my contributors and potential contributors will be less willing to contribute in the same amount if they knew or believed the value of their contribution will be diminished by matching funds disseminating the hostile speech of an opposing participating candidate.

8. The possibility of matching funds being issued in the primary or general election impacts and deters my campaign speech today in the form of diminishing or altering the timing of the campaign expenditures I am willing to make today and in the near future to promote my campaign messages. This is because, as I understand the law, spending money today or in the near future to support my campaign goes towards my primary election spending limit, pushing me closer to the trigger point for matching funds in the primary. The threat of hostile speech being triggered by matching funds, therefore, chills my willingness to engage in campaign speech and expenditures.

9. Additionally, given the repeatedly expressed concerns of my actual and potential contributors that they would not want to contribute as much, or at all, in the face of the prospect of matching funds, the threat of matching funds currently diminishes my campaign expenditures from what they would be in the absence of any such threat because I cannot

spend money as freely when I am more concerned about there being an adequate and continuing flow of contributions to my campaign. This amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

10. If the matching funds provision of the Arizona Citizens Clean Elections Act is still being enforced during the 2010 election cycle, I will be forced to attempt to minimize the competitive disadvantage that is created by my campaign expenditures during the primary election, either by refraining from making campaign expenditures that I would otherwise make in the absence of matching funds or by adopting a tactic of delaying my expenditures in such a manner as to minimize the benefit any participating candidate may receive from matching funds. This amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

11. Likewise, if I succeed in the primary and compete during the general election, I will be forced to attempt to minimize the competitive advantage created by my campaign fundraising either by refraining from seeking campaign fundraising or by refusing to accept campaign contributions significantly above the general election spending threshold. This

amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

12. I do not believe any reasonable person could read *Davis v. FEC*, especially in light of Judge Silver's rulings on the unconstitutionality of matching funds, and rely on matching funds being issued during the 2010 election cycle, without assuming risk far in excess of my reliance on the plain meaning of *Davis* and Judge Silver's rulings. Accordingly, I believe it would be manifestly unreasonable and unjust for any court to allow matching funds to be issued during the 2010 election cycle.

13. If Judge Silver's stay on the enforcement of her permanent injunction were not vacated and instead was extended to cover the 2010 election cycle, I would suffer harm.

I, Jack W. Harper, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 26th day of January, 2010.

/s/ Jack W. Harper

Case No. _____

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH, NANCY MCLAIN,
and TONY BOUIE,
Plaintiffs-Appellees,

vs.

KEN BENNETT, in his official capacity,
et al,
Defendants-Appellants.

DECLARATION OF JOHN MUNGER IN SUPPORT OF MOTION TO VACATE STAY AND IN OPPOSITION TO ENTRY OF APPELLATE STAY

Appeal from the United States District Court for the State of Arizona Case No. CV-081550-PHX-ROS, Hon. Roslyn O. Silver, presiding

---

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a candidate for Governor of the State of Arizona. I am familiar with Arizona's Clean Elections

Act and how matching funds are designed to be triggered by campaign speech in the form of campaign expenditures or contributions. I intend to run as a "traditional candidate," i.e. as a candidate supported by voluntary private contributions, not government subsidies.

3. The Arizona Clean Elections Act matching funds trigger mechanism infringes and chills my First Amendment rights, namely the right and ability to successfully contribute to my political campaign, my supporters' rights to contribute, and my right to expend money in support of my political campaign, as well as the public's right to disseminate financial resources to competing candidates who are participating in public financing ("participating candidates"). Therefore, matching funds impose a state-created negative consequence, punishment, "cost," "chilling effect," or competitive disadvantage on traditional candidates, like myself, and their supporters that would not exist in a world without matching funds. This punishment is forced upon me and others by the State as a direct result of the exercise of First Amendment rights in contributing to my campaign and in spending funds in support of my campaign and its message. The mere existence of the threat of matching funds in the 2010 election cycle, therefore, punishes and chills my supporters and me in exercising our First Amendment rights.

4. Prior to deciding to run for Governor, I analyzed the Honorable Judge Roslyn Silver's two prior decisions dealing with the merits of Plaintiffs'

challenge to the matching funds component of Arizona's Clean Elections Act and the impact of *Davis v. FEC*, 128 S. Ct. 2759 (2008). Based on the district court and Supreme Court's stated reasoning and rulings, I formed the belief and opinion that matching funds under the Clean Elections Act were unconstitutional and that the district court and Supreme Court would certainly enjoin them eventually. Accordingly, in reliance upon the district court and Supreme Court's cogent and clear reasoning, during early October 2009, I decided to run as a traditional candidate for the 2010 election cycle.

5. My reliance upon the belief and opinion that matching funds under the Clean Elections Act were unconstitutional was further confirmed by the entry by Judge Silver of a permanent injunction striking down the matching funds component of Arizona's Clean Elections Act on January 20, 2009 [10] [NCD per P.O.A.], which I read promptly after issuance.

6. As a traditional candidate for the 2010 election cycle, and in reliance upon the unconstitutionality of matching funds, I have raised more than $200,000.00 in contributions to my committee, and I have personally contributed $840 to my committee. My candidate committee has incurred expenses of more than $140,000.00 in developing my fundraising, campaign strategy and campaign messaging as a traditional candidate, in reliance upon the unconstitutionality of matching funds.

7. If my supporters and I had believed matching funds would likely be available for the 2010 election cycle, it is my firm belief based on many conversations with contributors that I would not have raised or been able to raise contributions in excess of $100,000.00. I base this inference on the repeatedly expressed interest of my contributors in my ability to project my message compared with the ability of my opponents to project their message, which is directly correlated to the amount of money available to my opponent's campaign. Having spoken to innumerable of potential and actual contributors, my consistent understanding in communicating with my contributors about my campaign fundraising was that a majority of them would not have contributed to my campaign had they thought matching funds could be issued to oppose their contribution in the 2010 primary or general election. This opinion was formed based on personal telephone and face to face conversations I have had with numerous contributors.

8. If Judge Silver's temporary stay on the enforcement of her permanent injunction were not vacated or if it were extended to cover the 2010 election cycle, allowing matching funds to be issued, I would suffer irreparable harm consisting of immediate difficulties raising contributions from otherwise willing supporters because of the deterrent effect of matching funds. Simply put, my contributors and potential contributors will be less willing to contribute in the same amount if they knew or believed the value of their contribution will be diminished by

matching funds disseminating the hostile speech of an opposing participating candidate.

9. Even the possibility of matching funds being issued in the primary or general election impacts and deters my campaign speech today in the form of diminishing or altering the timing of the campaign expenditures I am willing to make today and in the near future to promote my campaign messages. This is because, as I understand the law, spending money today or in the near future to support my campaign goes towards my primary election spending limit, pushing me closer to the trigger point for matching funds in the primary. The threat of hostile speech being triggered by matching funds, therefore, chills my willingness to engage in campaign speech and expenditures.

10. Additionally, given the repeatedly expressed concerns of my actual and potential contributors that they would not want to contribute as much, or at all, in the face of the prospect of matching funds, the threat of matching funds currently diminishes my campaign expenditures from what they would be in the absence of any such threat because I cannot spend money as freely when I am more concerned about there being an adequate and continuing flow of contributions to my campaign. This amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

11. If the matching funds provision of the Arizona Citizens Clean Elections Act is still being enforced during the 2010 election cycle, I will be forced to attempt to minimize the competitive disadvantage that is created by my campaign expenditures during the primary election, either by refraining from making campaign expenditures that I would otherwise make in the absence of matching funds or by adopting a tactic of delaying my expenditures in such a manner as to minimize the benefit any participating candidate may receive from matching funds. This amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

12. Likewise, if I succeed in the primary and compete during the general election, I will be forced to attempt to minimize the competitive advantage created by my campaign fundraising either by refraining from seeking campaign fundraising or by refusing to accept campaign contributions significantly above the general election spending threshold. This amounts to constructive censorship because I will be forced to refrain from engaging in communication at times and in manners that I would otherwise choose in order to avoid disseminating viewpoints that are hostile to my candidacy.

13. I do not believe any reasonable person could read *Davis v. FEC*, especially in light of Judge Silver's rulings on the unconstitutionality of matching

funds, and rely on matching funds being issued during the 2010 election cycle, without assuming risk far in excess of my reliance on the plain meaning of *Davis* and Judge Silver's rulings. Accordingly, I believe it would be manifestly unreasonable and unjust for any court to allow matching funds to be issued during the 2010 election cycle.

14. If Judge Silver's stay on the enforcement of her permanent injunction were not vacated and instead was extended to cover the 2010 election cycle, I would suffer harm at least proportionate to the monetary value of all contributions made to my campaign as of this date because of matching funds' negation of all or a substantial part of the competitive value in spending such contributions in support of my candidacy and message. This amount is approximately $220,000.00. Additionally, based on my fundraising efforts to date and the campaign projections of my consultants, if matching funds were not enjoined during the 2010 election cycle and, instead, Judge Silver's permanent injunction were stayed or extended to cover all or part of the 2010 election cycle, I estimate that contributions to my campaign, and correspondingly expenditures I would make, would be diminished by at least 50% – or at least $500,000.00 in the future.

15. Accordingly, as a component of any bond required as a condition of maintaining Judge Silver's temporary stay or entering an appellate stay, I would urge the Court to consider my total likely monetary losses of $500,000.00 in addition to the irreparable

harm of free speech being chilled, both mine and that of my supporters.

16. Further, if the Injunction against Matching Funds is stayed pending appeal, and if the Appellants nevertheless lose (which I believe is highly probable), I will be injured irreparably by any interim release to these Appellants of Matching Funds, and even by the mere threat that such funds may be released to them pending appeal once the funds are triggered. Once such funds are released to the Appellants pending appeal, I can never be compensated for the damage they will impose. Such funds will then be spent against me, and I will never be able to recover such damage. Moreover, if the Injunction is stayed pending appeal, my contributors' willingness to contribute as well as my willingness to expend monies will be chilled by the theoretical ability, and/or actuality, of Appellants to receive Matching Funds during said Appeal.

17. For all the above reasons it is my opinion that the only manner in which this Court can avoid irreparable damage to me and my campaign, and my rights to free speech, is to refuse to stay Judge Silver's Injunction pending appeal so that no Matching Monies can be spent during that time (causing me damage); handle this appeal using expeditious procedures allowing determination before the end of the Primary campaign in late August; so that if the Appellants lose (as I believe highly probable) they will not have irreparably damaged me by using irretrievable Matching Funds against me during

appeal, but IF the Appellants win they would still have the use of Matching Funds available in this Primary campaign.

I, John Munger, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 26th day of January, 2010.

/s/ John Munger

No. 09A736

IN THE SUPREME COURT OF THE UNITED STATES

JOHN MCCOMISH, NANCY MCLAIN, and TONY BOUIE,

Plaintiffs-Appellees,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, LOUIS HOFFMAN and LORI DANIELS, in their official capacity as members of the ARIZONA CLEAN ELECTIONS COMMISSION,

Defendants-Appellants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant Intervenor-Appellant.

On Emergency Application to Vacate Appellate Stay Entered by the United States Court of Appeals for the Ninth Circuit

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DECLARATION OF HERBERT COLEMAN IN SUPPORT OF PLAINTIFFS' EMERGENCY APPLICATION TO VACATE STAY BEFORE THE HON. JUSTICE ANTHONY M. KENNEDY

CLINT BOLICK *Counsel for Plaintiffs*
NICHOLAS C. DRANIAS* * *Counsel of Record*
GUSTAVO E. SCHNEIDER
GOLDWATER INSTITUTE
Scharf-Norton Ctr. for Const. Lit.
500 East Coronado Road, Phoenix, AZ 85004
(602) 462-5000; facsimile: (602) 256-7045

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a partner in the political consulting firm of Coleman Dahm & Associates in Phoenix, Arizona. I have been a professional political and campaign consultant for over 10 years. In the course of my professional experience, I have represented both non-participating and participating candidate clients who have run for public office in Arizona under the Citizen Clean Elections Act (hereinafter "Clean Elections"). I am currently representing participating candidate clients running under Clean Elections as well as non-participating candidate clients running "traditional".

3. I estimate I have represented and provided professional advice on campaign fundraising, expenditures and related tactics and strategies to more than 10 participating and more than 10 non-participating candidate clients. In the course of my professional experience, in order to educate myself and others about viable campaign tactics and strategies in the

State of Arizona, I have spoken with numerous other professional political campaign consultants regarding the matters discussed in this declaration. The statements contained in this declaration are based on my personal knowledge arising from my professional political consulting experience. And I also believe that all competent professional political and campaign consultants in Arizona would agree with the statements contained in this Declaration. In short, the statements contained herein represent commonly-held concerns, considerations, customs, practices and beliefs in the professional political consultancy community in the State of Arizona and the predictions and conclusions set forth are made are to a reasonable degree of certainty.

4. As a result of my professional political consulting experience, I have acquired direct knowledge with respect to the practical effects that the Clean Election matching fund provisions have on the campaign decisions of candidates for public office and the standard customs and practices of political campaign consultants arising from the competitive environment generated by Citizens Clean Elections Act, the administrative rules implementing the Act, and the general campaign finance regulations applicable to all candidates.

5. Citizens Clean Elections Commission Administrative Rule R2-20-104(D)(6), is commonly interpreted by political consultants in Arizona, including myself, as authorizing qualified participating candidates to incur obligations in excess of cash on hand,

up to the applicable spending limit, as modified, upon notification by Clean Elections that matching funds are to be available to a participating candidate.

Consequently, it is widespread custom and practice of political consulting professionals in Arizona to incur strategic expenditure obligations on behalf of participating candidates above the original Clean Elections primary and general election spending limits (hereinafter "caps") upon notification of the pending receipt of matching funds under A.R.S. § 16-952. Contingent obligations for radio and print advertising costs are often incurred by candidate clients upon notification by Clean Elections of the future issuance of matching funds. In my experience as a professional political consultant working with many participating candidates, the making of campaign expenditures by participating candidates based on incurred obligations very often precedes the actual issuance of matching funds pursuant to Clean Elections.

6. On or about February 2, 2010, Governor Brewer submitted nomination papers and prima facie evidence of sufficient $5 contributions to qualify for early public financing. *See* http://www.arizonaguardian.com/azg/index.php?option=com_content&view=article&id=1646:brewer-first-to-qualify-for-2010-ballot-public cash&catid=54:campaigns-a-elections&Itemid=75 (last visited February 7, 2010). The random sample signature verification process of her submissions is likely to be concluded within 10 days of such submission, by February 12, 2010. Consequently, Governor Brewer

will soon be qualified as a participating candidate to receive public financing. Accordingly, her political consultants will advise her that she is allowed to incur expenditure obligations in excess of cash on hand up to the applicable spending limit, upon notification by Clean Elections of her status as a qualified participating candidate. *See* Ariz. Rev. Stat. §§ 16-950, 16-951, 16-952, R2-20-104(3)(6).

7. Buz Mills, who is a non-participating candidate running for governor in competition with Governor Brewer, has reported personal contributions to his campaign in the amount of $2,000,000. *See* http://www.azsos.gov/cfs/PublicReports/2010/50460184-D24F-476B-AE47-4FF3DC6FE077.pdf (last visited February 8, 2010). Given his relatively low name recognition, there is a high likelihood that Buz Mills will make campaign expenditures in excess of the matching funds trigger threshold for gubernatorial candidates (which is $707,447) long before June 22, 2010.

8. Therefore, as soon as February 12, 2010 and almost certainly before June 22, 2010, Governor Brewer's candidate committee can be expected to incur expenditure obligations in excess of her base amount of public financing, based upon notification by Clean Elections of her eligibility to receive matching funds triggered by Buz Mills' campaign expenditures. Such incurred obligations would cause the negative consequences of matching funds to be felt by traditional candidates, such as John Munger as soon as February 12, 2010. For example, and without

limitation, by incurring preprimary obligations for scarce media airtime, Governor Brewer may be able to displace competing promotions by the gubernatorial campaigns of John Munger and Buz Mills (and other traditional candidates not directly competing with Governor Brewer).

9. In short, although the State will not issue matching funds to participating candidates until June 22, 2010, which is the beginning of the primary election period, participating candidates are expected by political consultants, such as myself, to incur expenditure obligations in the preprimary period as a result of the anticipated notifications of eligibility of matching funds.

10. Consequently, it is widespread custom and practice of political consulting professionals in Arizona, such as myself, to advise nonparticipating candidate clients (especially those who lack the financial resources of Mr. Mills), to refrain from making various campaign expenditures on behalf of their campaigns during the pre-primary period so as to avoid the triggering mechanism of matching funds during the primary period.

11. In fact, I have routinely advised non-participating candidate clients to refrain or delay from making any expenditure during the pre-primary period above the statutory threshold level that would result in the triggering of matching funds when the primary election period begins. My clients generally take my advice, which means the Clean Elections

matching fund provisions have an immediate and ongoing chilling effect on a non-participating candidate's decision to make or not to make various campaign expenditures during the pre-primary period which is underway and ends June 22, 2010.

I, Herbert Coleman, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 8th day of February, 2010.

/s/ Herbert Coleman

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN MCCOMISH, NANCY MCLAIN, and TONY BOUIE,

Plaintiffs-Appellees,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, and GARY SCARAMAZZO, ROYANN J. PARKER, JEFFREY L. FAIRMAN, LOUIS HOFFMAN and LORI DANIELS, in their official capacity as members of the ARIZONA CLEAN ELECTIONS COMMISSION,

Defendants-Appellants,

and

CLEAN ELECTIONS INSTITUTE, INC.,

Defendant Intervenor-Appellant.

On Emergency Application from the United States Court of Appeals for the Ninth Circuit

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DECLARATION OF TOM HORNE IN SUPPORT OF PLAINTIFFS' RENEWED EMERGENCY APPLICATION TO VACATE STAY BEFORE THE HON. JUSTICE ANTHONY M. KENNEDY

CLINT BOLICK — *Counsel for Plaintiffs*
NICHOLAS C. DRANIAS* — * *Counsel of Record*
GUSTAVO E. SCHNEIDER
GOLDWATER INSTITUTE
Scharf-Norton Ctr. for Const. Lit.
500 East Coronado Road, Phoenix, AZ 85004
(602) 462-5000; facsimile: (602) 256-7045

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a candidate for the Office of Attorney General in the State of Arizona. I am currently serving as Arizona's Superintendent of Public Instruction.

3. My candidate committee currently maintains approximately $285,000 in its segregated campaign account for use in promoting my candidacy. I personally loaned approximately $100,000 of this to my campaign.

4. The primary election spending limit for attorney general candidates in the 2010 primary election cycle is $183,311. *See* Citizens Clean Elections Commission 2009-2010 Participating Candidate Guide 26, 28, http://www.azcleanelections.gov/forms-pubs/2009-2010/candidates/participating.aspx (stating primary election spending limit).

4. I will be competing against at least one opposing participating candidate during the 2010

primary election cycle, namely Andrew Thomas. On June 22, 2010, the beginning of the primary election period, he could receive matching funds approximately equal to any amount I spend above $183,311 either by myself or in combination with the funds spent by independent expenditure committees who support by my candidacy. In essence, every dollar I spend over $183,311 could finance my opponent's candidacy by roughly one dollar and enable them to disseminate hostile speech against my campaign.

5. Any campaign expenditures I make after June 22, 2010 above the primary spending limit will result in the government giving my campaign's opponent(s) disproportionate fundraising advantages and the ability to disseminate hostile speech against my campaign that they would not otherwise have, merely because I exercised my First Amendment rights.

6. The renewed threat of matching funds being paid by the government to my opponents because of the Ninth Circuit's recent merits decision is already causing me and my supporters to become more hesitant to contribute to the campaign and also to hesitate to spend money that has already been contributed to the campaign, and thus is chilling the freedom to communicate our ideas and political message to the public.

7. If the permanent injunction on matching funds entered by the District Court is not in effect on June 22, 2010, I may refrain from spending money

during the 2010 primary election cycle above $183,311, in order to avoid financing the hostile speech of my participating opponent(s).

I, Tom Horne, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 21st day of May, 2010.

/s/ Tom Horne

Case Nos. 10-15165 & 10-15166

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH; et al. and DEAN MARTIN; et al.,

Plaintiffs and Plaintiff-Intervenors-Appellees,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, et al. and CLEAN ELECTIONS INSTITUTE, INC.,

Defendants and Defendant-Intervenor-Appellants.

On Appeal from the United States District Court
for the District of Arizona
Judge Roslyn Silver
Case No. CV-08-1550-PHX-ROS

DECLARATION OF DUSTI LEEANN MORRIS IN SUPPORT OF PLAINTIFFS/APPELLEES' MOTION FOR STAY OF MANDATE PENDING PETITION FOR CERTIORARI

Clint Bolick
Nicholas C. Dranias*
Gustavo E. Schneider
Scharf-Norton Center for
Constitutional Litigation
GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, AZ 85004
T (602) 462-5000 F (602) 256-7045
ndranias@goldwaterinstitute.org
gschneider@goldwaterinstitute.org

Counsel for Plaintiffs
**Lead Counsel*

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a traditional candidate for the Arizona state House of Representatives, Legislative District 11.

3. I am competing against two other traditional candidates and two participating candidates in the 2010 primary election cycle.

4. I am within a couple thousand dollars of spending over the approximately $14,000 spending limit that triggers the availability of matching funds to my participating opponents. At least ten percent of the money I have spent in support of my campaign is self-financed.

5. I intend to spend at least $7,000 more in support of my campaign, at least ten percent of which

will be self-financed. However, because I face two participating candidates, I am faced with the threat that for every dollar I spend over the spending limit, self-financed or not, nearly two dollars will be paid to my opposing participating candidates in matching funds. Moreover, because there are two other traditional candidates running, who are likely to spend above the spending limit, I also face the threat that my two opposing participating candidates will receive nearly another two dollars for every dollar each of my opposing traditional candidates spend. As a result, if my traditional opponents spend as much as I intend to spend, at least approximately $5,000 above the spending limit for a total of $15,000 as a class, it appears likely that each participating opponent of mine will receive nearly $15,000 in matching funds and that my participating opponents as a class will receive $30,000 in matching funds. The speech financed by matching funds threatens to swamp the privately-financed speech of all traditional candidates.

6. This threat of vast resources being triggered to my participating opponents will force me to change the timing of the funding and spending of money in support of my campaign to minimize the adverse impact of matching funds. Most likely this will involve delaying the funding and spending of money in support of my campaign, which will detract from the effectiveness of my communications and deny Arizonans from hearing my message in a timely way.

7. The continued threat of matching funds has thus deprived me of the unfettered freedom to spend my own money communicating my unique message and policy prescriptions to the people of the State of Arizona.

8. I support the effort to stay the issuance of the mandate from the May 21, 2010 merits decision in this case because I do not want Arizona's matching funds trigger to chill the speech of any other traditional candidate and deprive the public of yet another voice.

I, Dusti Leeann Morris, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 3rd day of June, 2010

/s/ Dusti Leeann Morris

Case Nos. 10-15165 & 10-15166

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH; et al. and
DEAN MARTIN; et al.,

Plaintiffs and Plaintiff-Intervenors-Appellees,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona; et al. and
CLEAN ELECTIONS INSTITUTE, INC.,

Defendants and Defendant-Intervenor-Appellants.

On Appeal from the United States District Court
for the District of Arizona
Judge Roslyn Silver
Case No. CV-08-1550-PHX-ROS

DECLARATION OF ERIC ULIS IN SUPPORT OF PLAINTIFFS/APPELLEES' MOTION FOR STAY OF MANDATE PENDING PETITION FOR CERTIORARI

Clint Bolick — *Counsel For Plaintiffs*
Nicholas C. Dranias* — **Lead Counsel*
Gustavo E. Schneider
Scharf-Norton Center for Constitutional Litigation
GOLDWATER INSTITUTE
500 East Coronado Road,
Phoenix, AZ 85004
T (602) 462-5000 / F (602) 256-7045
ndranias@goldwaterinstitute.org
gschneider@goldwaterinstitute.org

1. I am over the age of twenty one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a traditional candidate for the Arizona state House of Representatives, Legislative District 8.

3. I am competing against two other traditional candidates and three participating candidates in the 2010 primary election cycle.

4. Within the next ten days I will have spent enough money to come within four thousand dollars of approximately $14,000 spending limit that triggers the availability of matching funds to my participating opponents.

5. I intend to spend at least $10,000 above the spending limit in support of my campaign. However, because I face three participating candidates, I am faced with the threat that for every dollar I spend

above the spending limit, self-financed or not, nearly three dollars will be paid to my opposing participating candidates in matching funds to spend against me. Moreover, because there are two other traditional candidates running, who are likely to spend above the spending limit, I also face the threat that my three opposing participating candidates will receive nearly another three dollars for every dollar each of my opposing traditional candidates spend. As a result, if my traditional opponents spend as much as I intend to spend, namely at least $10,000 above the spending limit for a total of at least $30,000 as a class, it appears likely that each participating opponent of mine will receive at least nearly $30,000 in matching funds and that my participating opponents as a class will receive $90,000 in matching funds. The speech financed by matching funds threatens to swamp the privately-financed speech of all traditional candidates.

6. Additionally, I am uncomfortable and disturbed with the uncertainty of independent expenditures being made in support of my campaign because every dollar an independent expenditure committee spends supporting me above the spending limit will trigger nearly one dollar to each participating candidate opposing me, for a total of nearly three dollars to be spent against me for every dollar in independent expenditures spent to support me. This uncertainty is making me fear contributing and spending money in support of my campaign.

7. This threat of vast resources being triggered to my participating opponents is forcing me to change the timing of the funding and spending of money in support of my campaign to minimize the adverse impact of matching funds. Most likely this will involve delaying the funding and spending of money in support of my campaign, which will detract from the effectiveness of my communications and deny Arizonans from hearing my message in a timely way.

8. I would have contributed and spent at least $25,000 of my own money in support of my campaign through the primary election cycle if the district court's permanent injunction on matching funds were currently in effect. However, because of the threat of matching funds being issued to my participating opponents when I spend over approximately $14,000, I have not contributed or spent more than $300 in support of my campaign.

9. The continued threat of matching funds has thus deprived me of the unfettered freedom to spend my own money communicating my unique message and policy prescriptions to the people of the State of Arizona.

10. I support the effort to stay the issuance of the mandate from the May 21, 2010 merits decision in this case because I do not want Arizona's matching funds trigger to chill the speech of any other traditional candidate and deprive the public of yet another voice.

I, Eric Ulis, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 3rd day of June, 2010

/s/ Eric Ulis

Case Nos. 10-15165 & 10-15166

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH; et al. and
DEAN MARTIN; et al.,

Plaintiffs and Plaintiff-Intervenors-Appellees,

v.

KEN BENNETT, in his official capacity as
Secretary of State of the State of Arizona; et al. and
CLEAN ELECTIONS INSTITUTE, INC.,

Defendants and Defendant-Intervenor-Appellants.

On Appeal from the United States District Court
for the District of Arizona
Judge Roslyn Silver
Case No. CV-08-1550-PHX-ROS

DECLARATION OF JOHN MUNGER IN SUPPORT OF PLAINTIFFS/APPELLEES' MOTION FOR STAY OF MANDATE PENDING PETITION FOR CERTIORARI

Clint Bolick — *Counsel For Plaintiffs*
Nicholas C. Dranias* — **Lead Counsel*
Gustavo E. Schneider
Scharf-Norton Center for Constitutional Litigation
GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, AZ 85004
T (602) 462-5000 / F (602) 256-7045
ndranias@goldwaterinstitute.org
gschneider@goldwaterinstitute.org

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I had been a candidate for the office of Governor of the State of Arizona for the 2010 election cycle.

3. On June 1, 2010, I had approximately $175,000 of my own personally contributed funds in my segregated gubernatorial campaign account.

4. If the stay on the district court's permanent injunction on Arizona's matching funds trigger had been lifted, I would have spent at least $25,000 of the $175,000 of my own personally contributed funds, and possibly more, in support of my gubernatorial campaign by June 15, 2010.

5. Shortly before June 1, 2010, I became aware of reports that participating gubernatorial candidates

Jan Brewer and Dean Martin could qualify for in excess of one million dollars each in matching funds because gubernatorial candidate Buz Mills reportedly spent well over a million dollars in support of his campaign above the spending limit that triggers matching funds.

6. Because the stay on the district court's permanent injunction on the matching funds trigger was found to remain in effect on June 1, 2010, and with the June 22, 2010 distribution date for matching funds approaching rapidly, I could not in good faith or conscience spend the $25,000 of my own personally contributed funds to project my ideas to the public knowing that matching funds continued to threaten to provide millions of dollars to finance hostile opposing speech by participating gubernatorial candidates Jan Brewer and Dean Martin. Likewise, I could not request from my supporters further contributions to my campaign because it was obvious that my campaign message would be swamped and unsuccessful due to the vastly superior funding of the participating gubernatorial candidates. Furthermore, I felt forced to withdraw my candidacy and did, in fact, withdraw my candidacy because I knew the availability of matching funds would prevent me from overcoming the message-swamping effect of the millions of dollars in matching funds that could be given to my participating opponents.

7. The continued threat of matching funds has thus deprived me of the unfettered freedom to spend my own money communicating my unique message

and policy prescriptions to the people of the State of Arizona. In these ways, the availability of matching funds has chilled my ability to speak freely.

8. I support effort to stay the issuance of the mandate from the May 21, 2010 merits decision in this case because I do not want Arizona's matching funds trigger to chill the speech of any other traditional candidate and deprive the public of yet another voice.

I, John Munger, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 3rd day of June, 2010

/s/ John Munger

Case Nos. 10-15165 & 10-15166

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MCCOMISH; et al. and DEAN MARTIN; et al.,

Plaintiffs and Plaintiff-Intervenors-Appellees,

v.

KEN BENNETT, in his official capacity as Secretary of State of the State of Arizona, et al. and CLEAN ELECTIONS INSTITUTE, INC.,

Defendants and Defendant-Intervenor-Appellants.

On Appeal from the United States District Court
for the District of Arizona
Judge Roslyn Silver
Case No. CV-08-1550-PHX-ROS

DECLARATION OF MICHAEL BLAIRE IN SUPPORT OF PLAINTIFFS/APPELLEES' MOTION FOR STAY OF MANDATE PENDING PETITION FOR CERTIORARI

Clint Bolick
Nicholas C. Dranias*
Gustavo E. Schneider
Scharf-Norton Center for
Constitutional Litigation
GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, AZ 85004
T (602) 462-5000 F (602) 256-7045
ndranias@goldwaterinstitute.org
gschneider@goldwaterinstitute.org

Counsel for Plaintiffs
**Lead Counsel*

1. I am over the age of twenty-one, of sound mind, and willing to testify to the matters set forth herein under oath and in a court of law. I have personal knowledge of the facts set forth in this Declaration.

2. I am a traditional candidate for the Arizona state House of Representatives, Legislative District 8.

3. I am competing against two other traditional candidates and three participating candidates in the 2010 primary election cycle.

4. I have spent slightly over the approximately $14,000 spending limit that triggers the availability of matching funds to my participating opponents. The majority of the money I have spent in support of my campaign is self-financed.

5. I intend to spend at least $10,000 above the spending limit in support of my campaign. However, because I face three participating candidates, I am faced with the threat that for every dollar I spend

above the spending limit, self-financed or not, nearly three dollars will be paid to my opposing participating candidates in matching funds to spend against me. Moreover, because there are two other traditional candidates running, who are likely to spend above the spending limit, I also face the threat that my three opposing participating candidates will receive nearly another three dollars for every dollar each of my opposing traditional candidates spend. As a result, if my traditional opponents spend as much as I intend to spend, namely at least $10,000 above the spending limit for a total of at least $30,000 as a class, it appears likely that each participating opponent of mine will receive at least nearly $30,000 in matching funds and that my participating opponents as a class will receive $90,000 in matching funds. The speech financed by matching funds threatens to swamp the privately-financed speech of all traditional candidates.

6. Additionally, I am uncomfortable and disturbed with the uncertainty of independent expenditures being made in support of my campaign because every dollar an independent expenditure committee spends supporting me above the spending limit will trigger nearly one dollar to each participating candidate opposing me, for a total of nearly three dollars to be spent against me for every dollar in independent expenditures spent to support me. This uncertainty is making me fear contributing and spending money in support of my campaign.

7. This threat of vast resources being triggered to my participating opponents is forcing me to change the timing of the funding and spending of money in support of my campaign to minimize the adverse impact of matching funds. Most likely this will involve delaying the funding and spending of money in support of my campaign, which will detract from the effectiveness of my communications and deny Arizonans from hearing my message in a timely way.

8. The continued threat of matching funds has thus deprived me of the unfettered freedom to spend my own money communicating my unique message and policy prescriptions to the people of the State of Arizona.

9. I support the effort to stay the issuance of the mandate from the May 21, 2010 merits decision in this case because I do not want Arizona's matching funds trigger to chill the speech of any other traditional candidate and deprive the public of yet another voice.

I, Michael Blaire, declare under penalty of perjury under 28 U.S.C. § 1746(2), the laws of the United States and of the State of Arizona, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 3rd day of June, 2010

/s/ Michael Blaire